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

WHEN: Tuesday, January 25, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0955; Directorate Identifier 2010–NM–013–AD; Amendment 39–16560; AD 2011–01–07]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

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

ACTION: Final rule.

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

> During maintenance on a 328–100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.
>
> This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane.
>
> * * * * *

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

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 1, 2010 (75 FR 60659). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance on a 328–100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.
>
> This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane. To address this unsafe condition, the TC [type certificate] holder has developed new aileron trim tab fittings and rudder spring tab fitting, using a material that is more resistant to stress corrosion. The improved material rudder spring tab fittings were introduced on the production line for the Model 328–300 and for 328–100 aeroplanes with a s/n [serial number] higher than 3098.
>
> For the reasons described above, this AD requires the * * * replacement of [certain] aileron trim tab fittings and [certain] rudder spring tab fitting[s].

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimated that this AD will affect 33 products of U.S. registry. We also estimate that it will take 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,252 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $91,146, or $2,762 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–07 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–16560. Docket No. FAA–2010–0955; Directorate Identifier 2010–NM–013–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes, certificated in any category, as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 328–100 airplanes, all serial numbers, with part number (P/N) 001B576A2101000 left-hand (LH) or P/N 001B576A2101003 right-hand (RH) aileron trim tab fittings installed, or P/N 001A554A1711000 rudder spring tab fitting installed.

(2) Model 328–300 airplanes, all serial numbers, with P/N 001B576A2101000 (LH) or P/N 001B576A2101003 (RH) aileron trim tab fittings installed.

Subject

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

Reason

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

During maintenance on a 328-100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.

This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane.

* * * * *

Compliance

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

Actions

(g) For Model 328–100 airplanes: Within 6 months after the effective date of this AD, replace the aileron trim tab fittings P/N 001B576A2101000 (LH) and P/N 001B576A2101003 (RH) with P/N 001B576A2101004 (LH) and P/N 001B576A2101007 (RH) respectively; and replace the rudder spring tab fitting P/N 001A554A1711000 with P/N 001A554A1711006; in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–27–488, dated August 25, 2009.

(h) For Model 328–300 airplanes: Within 6 months after the effective date of this AD, replace the aileron trim tab fittings P/N 001B576A2101000 (LH) and P/N 001B576A2101003 (RH) with P/N 001B576A2101004 (LH) and P/N 001B576A2101007 (RH) respectively, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328J–27–237, dated August 25, 2009.

(i) After replacing the fittings as specified in paragraphs (g) and (h) of this AD, do not install P/N 001B576A2101000 (LH) or P/N 001B576A2101003 (RH) aileron trim tab fittings, or P/N 001A554A1711000 rudder spring tab fittings, on any airplane.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0266, dated December 17, 2009; and 328 Support Services Service Bulletins SB–328–27–488 and SB–328J–27–

237, both dated August 25, 2009; for related information.

Material Incorporated by Reference

(l) You must use 328 Support Services Service Bulletin SB–328–27–488, dated August 25, 2009; or 328 Support Services Service Bulletin SB–328J–27–237, dated August 25, 2009; as applicable, to do the actions required by this AD, unless the AD specifies otherwise. (The document date is only referenced on the odd-numbered pages of these documents.)

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

(2) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.*

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32982 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0854; Directorate Identifier 2009–NM–261–AD; Amendment 39–16559; AD 2011–01–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

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

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

* * * * *

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

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 9, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 23, 2010 (75 FR 57880), and proposed to supersede AD 2007–02–22, Amendment 39–14909 (72 FR 3708, January 26, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

For the reason described above, this AD requires repetitive inspections of the flap transmission system and associated components [for any missing, damaged, or incorrectly installed rubber gaiter, wiper rings and straps], and corrective action(s), depending on findings. [The corrective action is replacing missing, damaged, or incorrectly installed components.]

This [EASA] AD has been revised to correct the compliance time of 400 flight cycles in paragraph (3) into 400 flight hours. In addition, paragraph (4) has been introduced to clarify that the corrective actions do not end the requirement to continue the repetitive inspections, and some editorial changes for reasons of standardization. These do not affect the requirements of this AD as originally intended.

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

Comments

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

Request To Clarify Compliance Times in Paragraphs (h)(1) and (h)(2) of the NPRM

FedEx (FedEx) requested that we clarify the compliance times in paragraphs (h)(1) and (h)(2) of the NPRM. FedEx stated that paragraph (h)(1) establishes the deadline for replacing defective components found before the effective date of the AD, and pointed out that paragraph (h)(2) should establish the deadline for replacing the defective components found after the effective date of the AD.

We agree with the commenter. We removed "not" from paragraph (h)(2) of this final rule so that it now establishes the deadline for replacing the defective components after the effective date of the AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD affects about 46 products of U.S. registry.

The actions that are required by AD 2007–02–22 and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it will take about 3 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,730, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14909 (72 FR 3708, January 26, 2007) and adding the following new AD:

2011–01–06 Airbus: Amendment 39–16559. Docket No. FAA–2010–0854; Directorate Identifier 2009–NM–261–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) This AD supersedes AD 2007–02–22, Amendment 39–14909.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

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

Reason

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

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

* * * * *

Compliance

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

Restatement of Requirements of AD 2007–02–22, With Revised Service Information and Reduced Compliance Time for Corrective Action

Initial and Repetitive Inspections

(g) Within 2,500 flight cycles after March 2, 2007 (the effective date of AD 2007–02–22): Do a detailed inspection for any missing, damaged, or incorrectly installed wiper rings in the splined couplings of the flap transmission shafts; and a detailed inspection for any missing, damaged, or incorrectly installed rubber gaiters and straps on the sliding bearing/plunging joints of the flap transmission; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2099, dated February 17, 2006; or Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008. Repeat the inspections thereafter at intervals not to exceed 2,500 flight cycles. After the effective date of this AD, use only Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Actions

(h) If any damaged, missing or incorrectly installed wiper rings, rubber gaiters, or straps are found during any inspection required by paragraph (g) of this AD: At the applicable time in paragraph (h)(1) or (h)(2) of this AD, replace the applicable component with a serviceable component in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2099, dated February 17, 2006; or Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008. After the effective date of this AD, use only Airbus Mandatory

Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done before the effective date of this AD: Within 400 flight cycles after accomplishing the inspection.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has been done on or after the effective date of this AD: Within 400 flight hours after accomplishing the inspection required by paragraph (g) of this AD.

New Requirements of This AD

Actions

(i) Accomplishment of the actions required by paragraph (h) do not terminate the repetitive inspections required by paragraph (g) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–02–22, Amendment 39–14909, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0111R1, dated August 26, 2009; and Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008; for related information.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Mandatory Service Bulletin A310–27–2099, Revision 01, dated March 21, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32987 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0701; Directorate Identifier 2010–NM–017–AD; Amendment 39–16561; AD 2011–01–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0100 Airplanes

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

ACTION: Final rule.

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

Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. * * *

To address and correct this unsafe condition EASA [European Aviation Safety Agency] issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, * * * and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.

Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.

* * * * *

Loss of horizontal stabilizer function could result in partial loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 26, 2008 (73 FR 70261, November 20, 2008).

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 27, 2010 (75 FR 43876), and proposed to supersede AD 2008–22–14, Amendment 39–15710 (73 FR 70261, November 20, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. Any failed connection should be detected and corrected at the next scheduled inspection.
>
> To address and correct this unsafe condition EASA [European Aviation Safety Agency] issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, Part Number (P/N) 23233–1, and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.
>
> Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.
>
> To address the stress corrosion, the manufacturer of the bolt, Goodrich, has introduced a bolt with an improved corrosion protection, P/N 23233–3, through Service Bulletin 23100–27–29.
>
> For the reasons described above, this EASA AD retains the requirements of AD 2007–0287, which is superseded, and adds the requirement to replace the affected P/N 23233–1 bolts with improved bolts. Concurrently, the tie-wrap must be removed.
>
> Loss of horizontal stabilizer function could result in partial loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 4 products of U.S. registry.

The actions that are required by AD 2008–22–14 and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it will take about 7 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,550 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,580, or $2,145 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15710 (73 FR 70261, November 20, 2008) and adding the following new AD:

2011–01–08 Fokker Services B.V.: Amendment 39–16561. Docket No. FAA–2010–0701; Directorate Identifier 2010–NM–017–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) This AD supersedes AD 2008–22–14, Amendment 39–15710.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0100 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. * * *

To address and correct this unsafe condition EASA [European Aviation Safety Agency] issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, * * * and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.

Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.

* * * * *

Loss of horizontal stabilizer function could result in partial loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–22–14

Actions and Compliance

(g) Unless already done, within 6 months after December 26, 2008 (the effective date of AD 2008–22–14), do the following actions.

(1) Perform a one-time inspection (integrity check) for failure of the lower bolts of the stabilizer control unit dog-links, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–091, dated August 31, 2007. If a failed bolt is found, before further flight, replace the bolt with a serviceable bolt in accordance with the Accomplishment Instructions of that service bulletin.

(2) Install a tie-wrap through the lower bolts of the stabilizer control unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–091, dated August 31, 2007.

New Requirements of This AD

Actions

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD concurrently. Accomplishing the actions of both paragraphs (h)(1) and (h)(2) of this AD terminates the actions required by paragraph (g) of this AD.

(1) Remove the tie-wrap, P/N MS3367–2–9, from the lower bolts of the horizontal stabilizer control unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–092, dated April 27, 2009.

(2) Remove the lower bolts, P/N 23233–1, of the horizontal stabilizer control unit and install bolts, P/N 23233–3, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 23100–27–29, dated November 14, 2008.

(i) After accomplishing the requirements of paragraph (h) of this AD, do not install a bolt having P/N 23233–1 or a tie-wrap having P/N MS3367–2–9.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2009–0216, dated October 7, 2009; Fokker Service Bulletin SBF100–27–091, dated August 31, 2007; Fokker Service Bulletin SBF100–27–092, dated April 27, 2009; and Goodrich Service Bulletin 23100–27–29, dated November 14, 2008; for related information.

Material Incorporated by Reference

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

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Date
Fokker Service Bulletin SBF100–27–091	August 31, 2007.
Fokker Service Bulletin SBF100–27–092	April 27, 2009.
Goodrich Service Bulletin 23100–27–29	November 14, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of Fokker Service Bulletin SBF100–27–092, dated April 27, 2009; and Goodrich Service Bulletin 23100–27–29, dated November 14, 2008; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Fokker Service Bulletin SBF100–27–091, dated August 31, 2007, on December 26, 2008 (73 FR 70261, November 20, 2008).

(3) For Fokker service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; e-mail *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32990 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0855; Directorate Identifier 2010–NM–066–AD; Amendment 39–16566; AD 2011–01–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires repetitive inspections for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. This new AD requires replacing the midspar fuse pins with new, improved fuse pins, which would terminate the repetitive inspections. This AD was prompted by a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. We are issuing this AD to prevent damage of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

DATES: This AD is effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 13, 2008 (73 FR 59493, October 9, 2008).

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590; e-mail: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2008–21–03, Amendment 39–15687 (73 FR 59493, October 9, 2008). That AD applies to the specified products. The NPRM published in the **Federal Register** on September 23, 2010 (75 FR 57882). That NPRM proposed to continue to require repetitive inspections for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, and corrective actions if necessary. That NPRM also proposed to require replacing the midspar fuse pins with new, improved fuse pins, which would terminate the requirement for repetitive detailed inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supports the NPRM.

Conclusion

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

Costs of Compliance

There are about 1,961 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive detailed inspections (required by AD 2008–21–03).	4	$85	None	$340, per inspection cycle.	616	$209,440, per inspection cycle.
Midspar fuse pin replacement (new action).	1 per pin (up to 4 pins per airplane).	85	$843 per pin	Up to $3,712	616	Up to $2,286,592.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–21–03, Amendment 39–15687 (73 FR 59493, October 9, 2008), and adding the following new AD:

2011–01–12 The Boeing Company: Amendment 39–16566; Docket No. FAA–2010–0855; Directorate Identifier 2010–NM–066–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 9, 2011.

Affected ADs

(b) This AD supersedes AD 2008–21–03, Amendment 39–15687.

Applicability

(c) This AD applies to all The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a report of corrosion damage of the chrome runout on the head side found on all four midspar fuse pins of the nacelle strut. Additionally, a large portion of the chrome plate was missing from the corroded area of the shank. The Federal Aviation Administration is issuing this AD to prevent damage of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut, which could result in reduced structural integrity of the fuse pins, and consequent loss of the strut and separation of the engine from the airplane.

Compliance

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

Restatement of Requirements of AD 2008–21–03

Repetitive Inspections/Corrective Actions, With Revised Service Information

(g) At the applicable time specified in paragraph 1.E., "Compliance" of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007; except, where that service bulletin specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after November 13, 2008 (the effective date of AD 2008–21–03): Do a detailed inspection for discrepancies of the fuse pins of the inboard and outboard midspar fittings of the nacelle strut by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007; or Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010. Do all applicable corrective actions before further flight. Repeat the inspection at the time specified in paragraph 1.E. of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007. Accomplishing the actions of paragraph (h) of this AD terminates the requirements of this paragraph.

New Requirements of This AD

Replacement

(h) Within 120 months after the effective date of this AD, replace all midspar fuse pins having part number (P/N) 311A1092–2 with a midspar fuse pin having P/N 311A1092–3, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (g) of this AD for that fuse pin.

Actions Accomplished According to Previous Revision of Service Information

(i) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–54–1044, Revision 1, dated November 26, 2008, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590. Information may be e-mailed to: 9-*ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved in accordance with the requirements of AD 2008–21–03 are acceptable for the corresponding requirements of this AD.

Related Information

(k) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590; e-mail: *alan.pohl@faa.gov.*

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007; or Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–54A1044, Revision 2, dated January 20, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Special Attention Service Bulletin 737–54–1044, dated December 10, 2007, on November 13, 2008 (73 FR 59493, October 9, 2008).

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

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

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33003 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0959; Directorate Identifier 2010–NM–119–AD; Amendment 39–16564; AD 2011–01–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 Airplanes

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

ACTION: Final rule.

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

There have been two in-service reports of main landing gear (MLG) tire failure on landing, during which a flailing tire tread caused damage to No. 2 and No. 3 hydraulic system lines in the wing auxiliary spar area on the left side of the aircraft. This damage resulted in the loss of supply pressure to the inboard and outboard brakes, as the only remaining braking source available was the No. 3 hydraulic system accumulator. The degradation of the brake system performance could adversely affect the aircraft during landing.

* * * * *

The unsafe condition is loss of braking capability, which could reduce the ability of the flightcrew to safely land the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2011.

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 15, 2010 (75 FR 63420). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been two in-service reports of main landing gear (MLG) tire failure on landing, during which a flailing tire tread caused damage to No. 2 and No. 3 hydraulic system lines in the wing auxiliary spar area on the left side of the aircraft. This damage resulted in the loss of supply pressure to the inboard and outboard brakes, as the only remaining braking source available was the No. 3 hydraulic system accumulator. The degradation of the brake system performance could adversely affect the aircraft during landing.

This directive mandates the relocation of the No. 2 and No. 3 hydraulic system lines in the wing auxiliary spar area on the left side of the aircraft, together with a modification to the left wing rib and debris shield, in order to prevent damage to the hydraulic lines in the event of a MLG tire failure. The debris shield on the right side is also modified for part commonality.

The unsafe condition is loss of braking capability, which could reduce the ability of the flightcrew to safely land the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 115 products of U.S. registry. We also estimate that it will take 40 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $4,855 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $949,325, or $8,255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–10 Bombardier, Inc.: Amendment 39–16564. Docket No. FAA–2010–0959; Directorate Identifier 2010–NM–119–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, serial numbers 9002 through 9401 inclusive, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

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

There have been two in-service reports of main landing gear (MLG) tire failure on landing, during which a flailing tire tread caused damage to No. 2 and No. 3 hydraulic system lines in the wing auxiliary spar area on the left side of the aircraft. This damage resulted in the loss of supply pressure to the inboard and outboard brakes, as the only remaining braking source available was the No. 3 hydraulic system accumulator. The degradation of the brake system performance could adversely affect the aircraft during landing.

* * * * *

The unsafe condition is loss of braking capability, which could reduce the ability of the flightcrew to safely land the airplane.

Compliance

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

Actions

(g) Within 30 months after the effective date of this AD, relocate the No. 2 and No. 3 hydraulic system lines in the wing

auxiliary spar area on the left side of the aircraft, and modify the left wing rib and left and right debris shields, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–29–021 (for Model BD–700–1A10 airplanes) or 700–1A11–29–004 (for Model BD–700–1A11 airplanes), both Revision 01, both dated January 25, 2010, as applicable.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 700–29–021 or 700–1A11–29–004, both dated April 3, 2009, as applicable, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–10, dated March 26, 2010; and Bombardier Service Bulletins 700–29–021 and 700–1A11–29–004, both Revision 01, both dated January 25, 2010; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Service Bulletin 700–29–021, Revision 01, dated January 25, 2010; or Bombardier Service Bulletin 700–1A11–29–004, Revision 01, dated January 25, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32996 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0953; Directorate Identifier 2010–NM–010–AD; Amendment 39–16565; AD 2011–01–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive high frequency eddy current inspections for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and related investigative and corrective actions if necessary. This AD was prompted by reports of cracks found on either the left or right (or in one case, both) sides of the center section ribs of the horizontal stabilizer. We are issuing this AD to detect and correct cracking in the hinge bearing lugs of the center section of the left and right ribs, which could result in failure of the hinge bearing lugs and consequent inability of the horizontal stabilizer to sustain the required loads.

DATES: This AD is effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 9, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on October 1, 2010 (75 FR 60665). That NPRM proposed to require repetitive high frequency eddy current inspections for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and related investigative and corrective actions if necessary.

Comments

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

Explanation of Change to Applicability

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes and the change described previously. We have determined that these minor changes:

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

Conclusion

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

Interim Action

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

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry. We also estimate that it takes about 2 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,720, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–11 The Boeing Company: Amendment 39–16565; Docket No. FAA–2010–0953; Directorate Identifier 2010–NM–010–AD.

Effective Date

(a) This AD is effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracks found on either the left or right (or in one case, both) sides of the center section ribs of the horizontal stabilizer. The Federal Aviation Administration is issuing this AD to detect and correct cracking in the hinge bearing lugs of the center section of the left and right ribs, which could result in failure of the hinge bearing lugs and consequent inability of the horizontal stabilizer to sustain the required loads.

Compliance

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

Repetitive Inspections and Corrective Actions for Cracking

(g) At the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, except as required by paragraph (n) of this AD, do a high frequency eddy current (HFEC) inspection for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010. Do all applicable related investigative actions before further flight.

(h) If during any inspection required by paragraph (g) of this AD, no cracking is found, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,680 flight cycles.

(i) If during any inspection required by paragraph (g) or (h) of this AD, any crack is found having a length between Points 'A' and 'B' less than or equal to 0.15 inch and crack length between Points 'C' and 'D' less than or equal to 0.05 inch, as identified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010: Before further flight, blend out the crack; and within

1,000 flight cycles after doing the blend out, do an HFEC inspection of the blend out on the center section rib hinge bearing lug; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010. Repeat the HFEC inspection of the blend out thereafter at intervals not to exceed 400 flight cycles until the replacement specified by paragraph (j) is done.

(j) If any cracking is detected during any inspection required by paragraph (i) of this AD, before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010.

(k) If during any inspection required by paragraph (g) or (h) of this AD, any crack is found having a length between Points 'A' and 'B' greater than 0.15 inch or crack length between Points 'C' and 'D' greater than 0.05 inch, as identified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010: Before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010.

(l) For any airplane having a horizontal stabilizer center section rib replaced during the actions required by paragraph (j) or (k) of this AD: Before the accumulation of 7,200 total flight cycles on the new horizontal stabilizer center section rib, do the actions required by paragraph (g) of this AD, and do all applicable actions specified in paragraphs (h), (i), (j), and (k) of this AD.

Credit for Actions Accomplished According to Previous Issue of Service Bulletin

(m) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin MD90–55A016, dated December 16, 2009, are considered acceptable for compliance with the corresponding actions required by paragraphs (g), (h), (i), (j), and (k) of this AD.

Exception to the Service Bulletin

(n) Where Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, specifies a compliance time "after the original issue date on the service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Related Information

(p) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

Material Incorporated by Reference

(q) You must use Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32993 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0952; Directorate Identifier 2010–NM–131–AD; Amendment 39–16555; AD 2011–01–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, and –243 Airplanes; Airbus Model A330–300 Series Airplanes; and Airbus Model A340–200 and –300 Series Airplanes

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

ACTION: Final rule.

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

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require * * * a definition review against explosion hazards.

* * * * *

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2011.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 1, 2010 (75 FR 60655). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require all holders of type certificates for transport aircraft certified after 01 January 1958 with a capacity of 30 passengers or more, or a payload of 3 402 kg or more, to carry out a definition review against explosion hazards.

To be compliant with SFAR88/JAA INT/POL 25/12 requirements, this AD requires the installation of the updated FWC [flight warning computer] software standard which ensures correct operation of the APU bleed leak detection system before each flight.

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 53 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $22,525, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–02 Airbus: Amendment 39–16555. Docket No. FAA–2010–0952; Directorate Identifier 2010–NM–131–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes, all manufacturer serial numbers except those on which Airbus modification 51790 has been embodied in production or Airbus Service Bulletin A330–31–3066, A330–31–3082, A330–31–3093, or A330–31–3105 has been

embodied in service; certificated in any category.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

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

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require * * * a definition review against explosion hazards.

* * * * *

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Actions

(g) Within 6 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) For Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes: Install flight warning computer (FWC) software standard T3 (part number (P/N) LA2E20202T30000) on both FWCs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–31–3146, including Appendix 01, Revision 01, dated May 5, 2010.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Install FWC software standard L11 (P/N LA2E0060D110000) on both FWCs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–31–4125, Revision 01, dated December 9, 2008.

(h) Prior to or concurrently with accomplishing the corresponding requirements of paragraph (g) of this AD, install FWC software standard T2–0 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–31–3125, dated December 31, 2008 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes).

(i) Prior to or concurrently with accomplishing the corresponding requirements of paragraph (g) of this AD, install FWC software standard L10–1 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–31–4111, dated February 5, 2007 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes).

(j) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A330–31–3146, dated February 2, 2010; or A340–31–4125, dated October 27, 2008; are acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(l) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0089, dated May 10, 2010, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Airbus Service Bulletin—	Revision—	Dated—
A330–31–3125	Original	December 31, 2008.
A330–31–3146, including Appendix 01	01	May 5, 2010.
A340–31–4111	Original	February 5, 2007.
A340–31–4125	01	December 9, 2008.

Material Incorporated by Reference

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

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Revision—	Dated—
A330–31–3125	Original	December 31, 2008.
A330–31–3146, including Appendix 01	01	May 5, 2010.
A340–31–4111	Original	February 5, 2007.
A340–31–4125	01	December 9, 2008.

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32653 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0797; Directorate Identifier 2010–NM–141–AD; Amendment 39–16562; AD 2011–01–09]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Protective Breathing Equipment (PBE) Part Number 119003–11 Installed on Various Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires removing affected PBE units. This AD was prompted by reports of potentially defective potassium superoxide canisters used in PBE units, which could result in an exothermic reaction and ignition. We are issuing this AD to prevent PBE units from igniting, which could result in a fire and possible injury to the flightcrew or other persons.

DATES: This AD is effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 9, 2011.

ADDRESSES: For service information identified in this AD, contact B/E Aerospace, Inc., Commercial Aircraft Products Group, RGA Department, 10800 Pflumm Road, Lenexa, KS 66215; telephone (913) 338–7378; fax (913) 469–8419; Internet *http://www.beaerospace.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: David Fairback, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4154; fax (316) 946–4107; e-mail *David.Fairback@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on August 18, 2010 (75 FR 50941). That NPRM proposed to require removing affected PBE units.

Comments

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

Support for the NPRM

Boeing supported the contents of the NPRM.

Request To Withdraw the NPRM

Continental Airlines stated that Boeing has indicated in Fleet Team Digest 737NG–FTD–25–10003 that all defective B/E Aerospace PBEs have been successfully captured. We infer that Continental requested that we withdraw the NPRM.

We disagree with the request to withdraw the NPRM. We have not received assurance of such accomplishment. We contacted B/E Aerospace and it reported that their records show 422 of the 600 affected PBEs were contained, leaving 178 affected PBEs in the field. We have not changed the final rule in regard to this issue.

Request To Clarify Affected Serial Numbers

ABX Air requested that we clarify that no further action is required for PBEs with serial numbers outside the range. ABX Air suggested adding a new paragraph (g)(3) to the final rule to state "For any PBE not having a serial number from 003–50730M to 003–51329M inclusive: No further action is required."

We agree that no further action is necessary for PBEs with serial numbers outside the range specified in paragraph (g)(1) of this AD. We added a new paragraph (g)(3) to this final rule. We have also clarified paragraph (g)(2) of this AD to state that once the replacement has been done, no further action is required by paragraph (g) of this AD. However, paragraph (h) of this AD prohibits installations of the PBEs within the serial number range.

Conclusion

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

Costs of Compliance

We estimate that this AD affects up to 600 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$51,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–09 B/E Aerospace: Amendment 39–16562; Docket No. FAA–2010–0797; Directorate Identifier 2010–NM–141–AD.

Effective Date

(a) This AD is effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to B/E Aerospace protective breathing equipment (PBE) units having part number (P/N) 119003–11. These PBE units may be installed on (or carried or stowed on board), but not limited to, various transport category airplanes, certificated in any category, identified in but not limited to the airplanes of the manufacturers specified in Table 1 of this AD.

TABLE 1—AFFECTED MANUFACTURERS

Manufacturers
Airbus
ATR
Boeing
Bombardier
Embraer
Fokker
Hawker Beechcraft

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from reports of potentially defective potassium superoxide canisters used in PBE units, which could result in an exothermic reaction and ignition. The Federal Aviation Administration is issuing this AD to prevent PBE units from igniting, which could result in a fire and possible injury to the flightcrew or other persons.

Compliance

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

Inspection

(g) Within 120 days after the effective date of this AD, inspect to determine the serial number of the PBE units installed in the aircraft, in accordance with the Accomplishment Instructions of B/E Aerospace Service Bulletin 119003–35–5, dated April 19, 2010. A review of airplane records is acceptable in lieu of this inspection if the serial numbers of the PBE can be conclusively determined from that review.

(1) For any PBE that has a serial number from 003–50730M to 003–51329M inclusive: Before further flight, replace the PBE with a serviceable PBE, except as provided by paragraph (g)(2) of this AD.

(2) For any PBE that has a label showing that it has been restored in accordance with B/E Aerospace Service Bulletin 119003–35–6: The replacement has been done, and no further action is required by paragraph (g) of this AD.

(3) For any PBE not having a serial number from 003–50730M to 003–51329M inclusive: No further action is required by paragraph (g) of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a PBE unit having P/N 119003–11 with a serial number ranging from 003–50730M to 003–51329M inclusive, unless it has a label showing it has been restored in accordance with B/E Aerospace Service Bulletin 119003–35–6, dated May 21, 2010.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: David Fairback, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4154; fax (316) 946–4107; e-mail *David.Fairback@faa.gov*.

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

Related Information

(j) For more information about this AD, contact David Fairback, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W,

FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4154; fax (316) 946–4107.

Material Incorporated by Reference

(k) You must use B/E Aerospace Service Bulletin 119003–35–5, dated April 19, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of B/E Aerospace Service Bulletin 119003–35–5, dated April 19, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact B/E Aerospace, Inc., Commercial Aircraft Products Group, RGA Department, 10800 Pflumm Road, Lenexa, KS 66215; telephone (913) 338–7378; fax (913) 469–8419; Internet *http://www.beaerospace.com*.

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32994 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1080; Directorate Identifier 2008–NM–118–AD; Amendment 39–16554; AD 2011–01–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The earlier MCAI, Brazilian Airworthiness Directive 2007–08–01, effective September 27, 2007, describes the unsafe condition as:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88 (Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

The new MCAI, Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, describes the unsafe condition as:

An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

* * * * *

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

DATES: This AD becomes effective February 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2011.

On July 30, 2008 (73 FR 35908, June 25, 2008), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on March 23, 2010 (75 FR 13684), and proposed to supersede AD 2008–13–15, Amendment 39–15578 (73 FR 35908, June 25, 2008). That supplemental NPRM proposed to correct an unsafe condition for the specified products. Brazilian Airworthiness Directive 2007–08–01, effective September 27, 2007, describes the unsafe condition as:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88 (Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, describes the unsafe condition as:

An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

* * * * *

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Consider Additional Service Information

The commenter, EMBRAER, requested that we revise the supplemental NPRM to include Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, as acceptable for compliance with the proposed requirements. Parker makes the fuel conditioning unit (FCU) and ventral fuel conditioning unit (VFCU). Parker revised certain references within that service bulletin, clarifying all checks and inspections to be performed on the FCU and/or FVCU to ensure that the "safe life" features are maintained. Parker also published certain data substantiating that CUs in compliance with the 10,000-flight-hour inspection in accordance with Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, have had the equivalent inspection to the safe-life

testing required in the recently updated references. When an FCU is returned to the field after having that service bulletin incorporated, the unit is returned to the customer with an FAA 8130–3 tag indicating that the service bulletin was done, and the FCU is also marked to indicate that service bulletin.

We agree with the request and the commenter's rationale. We have added a provision to paragraph (g)(1) of this AD to consider FCUs inspected by Parker and marked with Parker Service Bulletin 367–934–28–110 and the date of accomplishment to be in compliance with the requirements of paragraph (g)(1) of this AD. We have also revised the previous NPRM by removing paragraph (1) of Note 3, which implied that the Parker service bulletin was not acceptable for compliance.

Additional Change to Supplemental NPRM

We have revised paragraph (g)(1) and added new Note 2 in this final rule to clarify the requirements to incorporate new limitations for fuel tank systems.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 43 products of U.S. registry.

The actions that are required by AD 2008–13–15 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it takes about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the new requirements on U.S. operators to be $3,655, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15578 (73 FR 35908, June 25, 2008) and adding the following new AD:

2011–01–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16554. Docket No. FAA–2008–1080; Directorate Identifier 2008–NM–118–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) This AD supersedes AD 2008–13–15, Amendment 39–15578.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI), Brazilian Airworthiness Directive 2007–08–01, effective September 27, 2007, states:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88 (Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

And the MCAI, Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, states:

An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

* * * * *

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems.

Restatement of Requirements of AD 2008–13–15

Actions and Compliance

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

(1) Before December 16, 2008, revise the ALS of the ICA to incorporate Section A2.5.2, Fuel System Limitation Items, of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, except as provided by paragraph (g) of this AD. Except as required by paragraph (g) of this AD, for all tasks identified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, the initial compliance times start from the applicable times specified in table 1 of this AD; and the repetitive inspections must be accomplished thereafter at the interval specified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, except as provided by paragraphs (f)(3) and (h) of this AD.

TABLE 1—INITIAL INSPECTIONS

Reference No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–11–00–720–001–A00	Functionally Check critical bonding integrity of selected conduits inside the wing tank, Fuel Pump and FQIS connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–13–01–720–002–A00	Functionally Check Aft Fuel tank critical bonding integrity of Fuel Pump, FQGS and Low Level SW connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–15–04–720–001–A00	Functionally Check Fwd Fuel tank critical bonding integrity of Fuel Pump, FQGS and Low Level SW connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–21–01–220–001–A00	Inspect Wing Electric Fuel Pump Connector	Before the accumulation of 10,000 total flight hours.	Within 90 days after December 16, 2008.
28–23–03–220–001–A00	Inspect Pilot Valve harness inside the conduit	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–23–04–220–001–A00	Inspect Vent Valve harness inside the conduit	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–41–03–220–001–A00	Inspect FQIS harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–46–02–220–001–A00	Aft Fuel Tank Internal Inspection: FQGS harness and Low Level SW harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–46–04–220–001–A00	Fwd Fuel Tank Internal Inspection: FQGS harness and Low Level SW harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.

(2) Within 90 days after July 30, 2008 (the effective date of AD 2008–13–15), revise the ALS of the ICA to incorporate Items 1, 2, and 3 of Section A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007.

(3) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h) of this AD.

New Requirements of This AD

Actions and Compliance

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

(1) Within 30 days after the effective date of this AD, add Tasks 28–41–01–720–001–A01 and 28–46–05–720–001–A01 identified in table 2 of this AD to Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483. The operator can accomplish this by placing a copy of this AD into that section of the operator's MPG–1483. Once these tasks have been added, Tasks 28–41–01–720–001–A00 and 28–46–05–720–001–A00 identified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, are no longer required. For the fuel limitation tasks identified in Table 2 of this AD, do the initial task at the later of the applicable "Threshold" and "Grace Period" times specified in table 2 of this AD. Fuel condition units (FCUs) inspected by Parker and marked with Parker Service Bulletin 367–934–28–110 and the date of accomplishment are considered to be in compliance with the requirements of this paragraph.

TABLE 2—INSPECTIONS

Task No.	Description	Part No.	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
			Threshold	Grace period	
28–41–01–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in the Check section 2; an internal visual inspection as shown in the Repair section 1; a functional check of the safe-life features as shown in Testing and Fault isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the fuel conditioning unit (FCU), in accordance with Parker Component Maintenance Manual with Illustrated Parts List (CMM) 28–41–69, Revision 2, dated March 13, 2009.	367–934–002	Before the accumulation of 10,000 total flight hours on the FCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the FCU since the most recent functional check.
28–46–05–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the auxiliary fuel conditioning unit (AFCU), in accordance with Parker CMM 28–41–66, Revision 1, dated March 13, 2009.	367–934–004	Before the accumulation of 10,000 total flight hours on the AFCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the AFCU since the most recent functional check.
28–46–05–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the AFCU, in accordance with Parker CMM 28–41–90, dated April 3, 2009.	367–934–006	Before the accumulation of 10,000 total flight hours on the AFCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the AFCU since the most recent functional check.

Note 2: Once EMBRAER incorporates Tasks 28–41–01–720–001–A01 and 28–46–05–720–001–A01 into Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, either by a temporary revision or by a general revision of Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, this AD may be removed from Section A2.5.2 of that document.

(2) After accomplishment of the actions specified in paragraph (g)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (h) of this AD.

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS of the ICA, as required by paragraphs (f)(1), (f)(2), and (g)(1) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS of the ICA has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows:

(1) The applicability of Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, includes models other than Model EMB–135BJ airplanes. However, this AD does not include those other models. Those models are included in the applicability of FAA AD 2008–13–14, Amendment 39–15577. We are considering further rulemaking to revise AD 2008–13–14.

(2) Although Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, specifies both revising the airworthiness limitations and repetitively inspecting, this AD only requires the revision. Requiring a revision of the airworthiness limitations, rather than requiring individual repetitive inspections, requires operators to record AD compliance status only at the time they make the revision, rather than after every inspection. Repetitive inspections specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested

using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2007–08–01, effective September 27, 2007, and 2009–08–03, effective August 20, 2009; Sections A2.5.2, Fuel System Limitation Items, and A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007; and the Parker CMMs listed in table 2 of this AD; for related information.

Material Incorporated by Reference

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

TABLE 3—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Parker Component Maintenance Manual With Illustrated Parts List 28–41–69	2	March 13, 2009.
Parker Component Maintenance Manual With Illustrated Parts List 28–41–66	1	March 13, 2009.
Parker Component Maintenance Manual With Illustrated Parts List 28-41-90	Original	April 3, 2009.
Sections A2.5.2, Fuel System Limitation Items, and A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483.	5	March 22, 2007.

(Parker Component Maintenance Manual With Illustrated Parts List 28–41–69, Revision 2, dated March 13, 2009, contains an incorrect date on page 105; the correct date is March 13, 2009.)

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in table 4 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 4—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Parker Component Maintenance Manual With Illustrated Parts List 28–41–69	2	March 13, 2009.
Parker Component Maintenance Manual With Illustrated Parts List 28–41–66	1	March 13, 2009.
Parker Component Maintenance Manual With Illustrated Parts List 28-41-90	Original	April 3, 2009.

(2) The Director of the Federal Register previously approved the incorporation by reference of Sections A2.5.2, Fuel System Limitation Items, and A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, on July 30, 2008 (73 FR 35908, June 25, 2008).

(3) For EMBRAER service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* For Parker service information identified in this AD, contact Parker Hannifin Corporation, Aerospace Group, Electronic Systems Division, 300 Marcus Boulevard, Smithtown, New York 11787; telephone 631–231–3737; e-mail *csoengineering@parker.com;* Internet *http://www.parker.com.*

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

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

Issued in Renton, Washington, on December 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32998 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1278; Directorate Identifier 2010–NM–260–AD; Amendment 39–16567; AD 2011–01–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule; request for comments.

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

During a routine maintenance check on an A300–600 aeroplane, the operator found the pitch uncoupling unit installed at an incorrect location. The pitch uncoupling unit was inverted with the rod assembly.

After a complete inspection of all A300–600 aeroplanes of its fleet, the operator identified the same incorrect installation on another aeroplane.

* * * * *

This condition, if not detected and corrected, in combination with particular failure modes, could lead to loss of control of the aeroplane during the takeoff phase.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 20, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 20, 2011.

We must receive comments on this AD by February 22, 2011.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2010–0239–E, dated November 19, 2010 [Corrected November 23, 2010] (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During a routine maintenance check on an A300–600 aeroplane, the operator found the pitch uncoupling unit installed at an incorrect location. The pitch uncoupling unit was inverted with the rod assembly.

After a complete inspection of all A300–600 aeroplanes of its fleet, the operator identified the same incorrect installation on another aeroplane.

Had this routine maintenance check, which was accomplished for other purposes, not been carried out, the incorrect installation could only have been detected during the accomplishment of the pitch uncoupling functional test.

Note: Another maintenance task, the pitch uncoupling operational test, scheduled at intervals not to exceed 2,000 FH or 36 months, whichever occurs first (MPD task 273100–01–1), only validates the condition of the pitch uncoupling solenoid.

This condition, if not detected and corrected, in combination with particular failure modes, could lead to loss of control of the aeroplane during the takeoff phase.

For the reason described above, this AD requires a one time visual inspection, to detect any incorrect installation of the pitch uncoupling unit,and, depending on findings, to take corrective actions.

This [EASA] AD was republished to correct the compliance time.

Corrective actions include removing and re-installing the pitch uncoupling unit and rod assembly at the correction location and doing a functional test to verify correct operation. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A300–600 All Operators Telex 27A6068, Revision 01, dated November 18, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a pitch uncoupling unit was found to be installed at an incorrect location. The pitch uncoupling unit was inverted with the rod assembly. This condition, if not detected and corrected, in combination with other failure modes, could lead to loss of control of the airplane during the take-off phase. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1278; Directorate Identifier 2010–NM–260–

AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–13 Airbus: Amendment 39–16567. Docket No. FAA–2010–1278; Directorate Identifier 2010–NM–260–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 20, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all serial numbers, except for airplanes on which the pitch uncoupling functional test has already been performed in service since new.

Note 1: The pitch uncoupling functional test is described in Section 3.D.(2) of task 27–31–00, Page Block 501 of Airbus A300–600 Aircraft Maintenance Manual (AMM) [Maintenance Planning Document (MPD) task 273100–02–1].

Subject

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

Reason

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

During a routine maintenance check on an A300–600 aeroplane, the operator found the pitch uncoupling unit installed at an incorrect location. The pitch uncoupling unit was inverted with the rod assembly.

After a complete inspection of all A300–600 aeroplanes of its fleet, the operator identified the same incorrect installation on another aeroplane.

* * * * *

This condition, if not detected and corrected, in combination with particular failure modes, could lead to loss of control of the aeroplane during the takeoff phase.

* * * * *

Compliance

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

Inspection, Re-Installation, and Functional Test

(g) Within 30 days after the effective date of this AD, do a general visual inspection for correct location of the pitch uncoupling unit, in accordance with paragraph 4.2 of Airbus A300–600 All Operators Telex (AOT) 27A6068, Revision 01, dated November 18, 2010. If the pitch uncoupling unit is found inverted with the rod assembly, before further flight, remove and re-install the uncoupling unit and the rod assembly at their correct locations and do a functional test of the pitch uncoupling unit to verify correct operation, in accordance with paragraph 4.2 of Airbus A300–600 AOT 27A6068, Revision 01, dated November 18, 2010.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to

be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Emergency Airworthiness Directive 2010–0239–E, dated November 19, 2010 [Corrected November 23, 2010]; and Airbus A300–600 AOT 27A6068, Revision 01, dated November 18, 2010; for related information.

Material Incorporated by Reference

(j) You must use Airbus A300–600 All Operators Telex 27A6068, Revision 01, dated November 18, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32995 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1023 Directorate Identifier 2010–CE–055–AD; Amendment 39–16557; AD 2011–01–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes

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

ACTION: Final rule.

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

It has been detected a short circuit in harness W101 due to its interference with the main door mechanism. Further analysis of the affected region has also revealed the possibility of chafing between the same harness and the oxygen tubing. The chafing of the wiring harness against the oxygen tubing could lead to a short circuit of the wiring harness and a subsequent fire in the airplane.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

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

DATES: This AD becomes effective February 9, 2011.

On February 9, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 38/2, BRASIL, telephone: ++55 12 3927–5383; fax: ++55 12 3927–2610; E-mail: *reliability.executive@embraer.com.br;* Internet: *http://www.embraer.com.br.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 15, 2010 (75 FR 63422). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been detected a short circuit in harness W101 due to its interference with the main door mechanism. Further analysis of the affected region has also revealed the possibility of chafing between the same harness and the oxygen tubing. The chafing of the wiring harness against the oxygen tubing could lead to a short circuit of the wiring harness and a subsequent fire in the airplane.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires installing clamps to the W101 wiring harness.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 83 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $13 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $85,739 or $1,033 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–04 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16557; Docket No. FAA–2010–1023; Directorate Identifier 2010–CE–055–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 airplanes, serial numbers 50000005 thru 50000105, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 92: Wiring Elements.

Reason

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

It has been detected a short circuit in harness W101 due to its interference with the main door mechanism. Further analysis of the affected region has also revealed the possibility of chafing between the same harness and the oxygen tubing. The chafing of the wiring harness against the oxygen tubing could lead to a short circuit of the wiring harness and a subsequent fire in the airplane.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires installing clamps to the W101 wiring harness.

Actions and Compliance

(f) Unless already done, within 600 hours time-in-service (TIS) after February 9, 2011 (the effective date of this AD) or within 12 months after February 9, 2011 (the effective date of this AD), whichever comes first, install clamps and protection sleeves to harness W101 within the cockpit area and rework structures to eliminate the fretting spots of the harness with the main door locking mechanism and with the oxygen tube. Do the installation following Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin No. SB 500–24–0002, dated March 8, 2010.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions,

completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL (ANAC), AD No.: 2010–09–02, dated October 17, 2010; and Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin No. SB 500–24–0002, dated March 8, 2010, for related information.

Material Incorporated by Reference

(i) You must use Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin No. SB 500–24–0002, dated March 8, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 38/2, BRASIL, telephone: ++55 12 3927–5383; fax: ++55 12 3927–2610; E-mail: *reliability.executive@embraer.com.br;* Internet: *http://www.embraer.com.br.*

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

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

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

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32809 Filed 1–4–11; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2008–0050]

RIN 0960–AE59

Supplemental Security Income (SSI) for the Aged, Blind, and Disabled; Dedicated Accounts and Installment Payments for Certain Past-Due SSI Benefits

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules adopt, with some minor changes, the interim final rules with request for comment we published in the **Federal Register** on December 20, 1996. 61 FR 67203. The interim final rules concerned dedicated accounts and installment payments for certain past-due SSI benefits and reflected amendments to the Social Security Act (Act) made by sections 213 and 221 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These final rules reflect these provisions, as well as subsequent changes to these provisions made by the Balanced Budget Act of 1997 (BBA), the Social Security Protection Act of 2004 (SSPA), and the Deficit Reduction Act of 2005 (DRA). The changes we are making in these final rules will ensure that our rules accurately reflect the statutory provisions on which they are based.

DATES: These final rules are effective February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Background

The interim final rules reflected the dedicated account requirements that were added by section 213 of the PRWORA. Public Law 104–193. Congress enacted the PRWORA on August 22, 1996. Section 213 of the PRWORA added a new section 1631(a)(2)(F) of the Act for payments made after August 22, 1996. Under section 1631(a)(2)(F) of the Act, the representative payee of an eligible person under age 18 must establish in certain situations "an account in a financial institution," which we refer to as a "dedicated account." Specifically, the representative payee must establish a dedicated account if the person is eligible for past-due monthly SSI benefits, including any federally administered State supplementary payments, that exceed 6 times the maximum "monthly benefit payable" under title XVI, which we call the Federal benefit rate (FBR), after any withholding for interim assistance reimbursement (IAR) to a State(s) and after payment of attorney fees. Under section 1631(a)(2)(F) of the Act, the past-due benefits in a dedicated account may only be used for certain allowable expenses.

Sections 213(b) and (c) of the PRWORA also amended sections 1613(a) and 1612(b) of the Act, respectively, to provide that funds in a dedicated account, established and maintained in accordance with section 1631(a)(2)(F) of the Act, including accrued interest or other earnings, are excluded from resources and from income.

Since we published the interim final rules, Congress has enacted three other laws that made additional changes to the dedicated account requirements. We are including these statutory changes in the final rules without requesting public comment because the changes are required by statute and we are making no discretionary policy changes.

The BBA made one clarification and one revision to section 1631(a)(2)(F) of the Act. Public Law 105–33. Section 5522(b)(2) of the BBA amended section 1631(a)(2)(F)(iii) of the Act by clarifying which subsequent past-due benefits a representative payee may deposit in an established dedicated account. Congress made this technical change to the statute because the PRWORA used the two different terms "underpayment" and "past-due benefits" to describe funds that could be deposited in these accounts. This terminology caused confusion. Section 5522(b)(2) of the BBA corrected this technical issue, and we are including this change in these final rules. As amended by section 5522(b)(2) of the BBA, section 1631(a)(2)(F)(iii) of the Act states that the representative payee may deposit into an established dedicated account any other funds representing past-due benefits under title XVI of the Act which equal or exceed the maximum monthly FBR, including any federally

administered State supplementary payments. While not required, the representative payee may deposit these past-due benefits into the dedicated account.

Section 5522(b)(1) of the BBA revised section 1631(a)(2)(F)(ii)(III)(bb) of the Act and required us to reduce "future benefits payable" to a recipient (or to a recipient and his or her spouse), who is his or her own payee and who knowingly misapplies benefits from a dedicated account. We must reduce the "future benefits payable" by an amount equal to the amount of benefits that were misapplied.

The interim final rules also reflected the installment payment requirements that were added to section 1631(a) of the Act by section 221 of the PRWORA. Under section 1631(a)(10) of the Act, past-due benefits paid on or after December 1, 1996, had to be paid in installments if the amount due equaled or exceeded 12 times the maximum FBR, after any withholding for IAR to a State(s). Section 1631(a)(10) of the Act provides limitations on the size of the installment payments, as well as exceptions to those limitations and exceptions to the installment payment requirement.

In 2004, Congress enacted the SSPA. Public Law 108–203. Section 302(b)(1) of the SSPA amended section 1631(a)(2)(F)(i)(II) of the Act to specify that the past-due monthly benefits for dedicated account purposes are those that remain after any withholding for payment of attorney fees.

Section 302(b)(2) of the SSPA amended section 1631(a)(10)(A) of the Act to specify that the past-due monthly benefits for installment payment purposes are those remaining after any withholding for payment of attorney fees. Also, section 7502 of the DRA amended section 1631(a)(10)(A)(i) of the Act to change the threshold amount for determining whether past-due payments will be made in installments. Public Law 109–171. Under section 1631(a)(10) of the Act, as amended by section 7502 of the DRA, effective May 8, 2006, past-due benefits must be paid in installments if the amount due equals or exceeds 3 times the maximum FBR after any withholding for IAR to a State(s) and payment of attorney fees.

These final rules reflect the statutory requirement that past-due benefits, including any federally administered State supplementary payments, generally be made in installments if the amount due, after any reimbursement for IAR and any withholding of attorney fees, equals or exceeds 3 times the maximum FBR. We pay these past-due benefits in not more than 3 installments, with the first and second installments not to exceed 3 times the FBR plus any federally administered State supplementation. We make the installment payments at 6-month intervals.

These final rules also reflect the statutory exceptions to the installment payment requirements and the exception to the limit on the amount of the first and second installment payments, when the recipient has certain outstanding debts or current or anticipated expenses.

In these final rules, we have clarified our rules on dedicated accounts and installment payments as a result of the public comments we received. We also have clarified the rules governing receipt of installment payments when a recipient subsequently becomes eligible for additional benefit amounts while the recipient is already receiving installment payments.

Public Comments

On December 20, 1996, we published an interim final rule with request for comments in the **Federal Register** and provided a 60-day comment period. 61 FR 67203. We received 29 letters, most of which were from attorneys and advocacy groups. We carefully considered all of the comments in publishing these final rules, and we have adopted several recommendations made by the commenters.

We have summarized the commenters' views and have responded to the significant issues raised by the commenters that are within the scope of the interim final rules. For ease of reference, we have organized the comments and responses as follows: First, we address general comments, i.e., comments that are either about the interim final rules as a whole or apply to more than one section of the rules; then, we address the remaining comments about specific sections of the rules.

General Comments

Comment: Most commenters objected to section 213 of the PRWORA, section 221 of the PRWORA, or both. These commenters stated that they did not believe these statutory provisions would improve the administration of the SSI program and that this legislation should not have been enacted. Attorneys commented that these statutory changes were a disservice to their SSI clients and that these changes would deny SSI recipients access to competent legal representation because they did not allow for increased installment payments to cover attorney fees or for attorney fees to be recognized as allowable dedicated account expenses. The commenters also were concerned that paying SSI in installments could distress SSI recipients. These commenters requested that we not implement the enacted requirements.

Response: We have not adopted these comments because we must implement statutes that affect the programs we administer. Further, as we explained above, when we decide whether the representative payee must establish a dedicated account, we consider the amount of the past-due benefits after payment of attorney fees. Public Law 104–193 affects many aspects of the SSI program, and we are not authorized to ignore any of the legislative provisions or to reconsider implementing these changes. While sections 213 and 221 of the PRWORA restrict the use and payment of certain SSI payments, Congress has also provided some flexibility in determining appropriate uses and for increasing the installment payment amounts when the SSI recipient's circumstances involve certain debts and expenses, which we enumerate in § 416.545. Also, we do not count an installment payment as a resource for nine months after the month in which the payment is made. This exclusion from resources allows an eligible person to spend down the installment payment before it affects his or her eligibility for SSI. The funds in a dedicated account are excluded entirely from income and resources for determining SSI eligibility and payment amounts.

Comment: Two commenters questioned whether due process would be afforded in misapplication situations.

Response: Misapplication of benefits occurs when a representative payee knowingly uses dedicated account funds for expenditures that are not permitted. A determination that a representative payee misapplied funds and therefore is liable to us for such misapplication is an initial determination with appeal rights under § 416.1402.

Comment: One commenter stated that a regulatory flexibility analysis is needed. The commenter expressed concern that banks would profit from the establishment of dedicated accounts while landlords, grocers, and public utilities would not. The commenter's concern is that there could be significant economic impact because persons would not have access to their entire lump sum amount.

Response: We do not agree with the commenter. A regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612, is only required if a proposed or final

regulation would have a significant economic impact on a substantial number of small entities. It is not required if the head of the agency certifies that the proposed or final rule would not have a significant economic impact on a substantial number of small entities. In such a case, the agency will publish the certification in the **Federal Register** at the time it publishes a proposed or final rule and provide a statement providing the factual basis for the certification. 5 U.S.C. 605.

Commissioner Chater certified that the interim final rule did not require a regulatory flexibility analysis, and we provided an appropriate factual basis for the certification in the preamble to the interim final rule. 61 FR 67203, 67205 (1996). We have also certified that these final rules do not require a regulatory flexibility analysis, and we have included that certification, along with the appropriate factual basis for the certification, in the preamble below. The commenter's concern about the possible effect of the rule on landlords, grocers, and public utilities does not require us to do a Regulatory Flexibility Act analysis. Neither the interim final nor the final rules would directly regulate any small entities, including any landlords, grocers or public utilities. An agency is not required to perform a regulatory flexibility analysis in order to assess the indirect effects of a regulation on small entities that are not subject to the regulation.

Comments About Specific Regulatory Sections

Section 416.538(d) Amount of Underpayment or Overpayment—Limited Delay in Payment of Underpaid Amount to Eligible Persons Under Age 18 Who Has a Representative Payee

Comment: One commenter stated that we should not require a representative payee to establish a dedicated account prior to our paying past-due benefits. The commenter suggested that we issue the past-due payments to the payee and the payee will, at a later date, tell us that he or she established the account.

Response: Section 1631(a)(2)(F)(i)(I) of the Act explicitly requires that a representative payee must "establish * * * an account in a financial institution into which such benefits shall be paid * * *." The intent of the legislation is to ensure that the funds are placed in a separate dedicated account to be used only for certain specified expenses primarily related to the child's impairment. Accordingly, we must deposit these past-due benefits directly into the dedicated account as directed by Congress. We have made no changes to § 416.538(d) as previously published.

Comment: One commenter believed that directly depositing title XVI past-due benefits into the dedicated account would make these funds subject to attachment, garnishment, or levy by creditors, which usually they are not. They no longer would be "benefit checks" but simply funds in an account. This would leave the door open to creditors to attach the funds because the funds no longer would be protected by section 207 of the Act.

Response: Section 207 of the Act, 42 U.S.C. 407, generally prevents benefit payments from being subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law. The protections afforded by section 207 apply to SSI payments pursuant to section 1613(d)(1) of the Act, 42 U.S.C. 1382(d). We have operated a successful direct deposit program for more than two decades. Courts have generally ruled that title II and title XVI benefits do not lose their identity as benefits protected under section 207 of the Act when they are directly deposited into a bank account. Further, the funds clearly retain such protection in the dedicated account because they are not commingled with other funds.

In addition, we are currently pursuing another rulemaking that we expect will address the commenter's concerns. On April 19, 2010, we published a joint notice of proposed rulemaking, along with the Department of the Treasury, the Department of Veterans Affairs, the Office of Personnel Management, and the Railroad Retirement Board. 75 FR 20299 (2010). The joint proposed rule would implement statutory restrictions on the garnishment of Federal benefit payments. The agencies took this action in response to recent developments in technology and debt collection practices that have led to an increase in the freezing of accounts containing Federal benefit payments.

The proposed rule would establish procedures that financial institutions must follow when a garnishment order is received for an account into which Federal benefit payments have been directly deposited. The proposed rule would require financial institutions that receive a garnishment order to determine whether any Federal benefit payments were deposited to the account within 60 calendar days prior to receiving the order. If so, the financial institutions must ensure that the account holder has access to an amount equal to the sum of such payments in the account or to the current balance of the account, whichever is lower.

Section 416.542 Underpayments—To Whom Underpaid Amount Is Payable

Comment: One commenter objected to our following § 416.542(b) if the eligible person dies before all installment payments have been paid.

Response: The installment payment requirement in section 1631(a)(10) of the Act did not amend the law regarding the payment of past-due benefits after a person's death. We believe that provision applies to installment payments of past-due benefits the same way it applies to regular payments of past-due benefits. Thus, we did not modify § 416.542.

Section 416.545 Paying Large Past-Due Benefits in Installments

Comment: One commenter suggested that we clarify the reference to the 6-month resource exclusion rule, which applies to benefits received before March 2, 2004.

Response: We did add § 416.1247, which explains the exclusion from resources of dedicated accounts and interest or other earnings on the account. Section 431 of the SSPA changed the 6-month resource exclusion for title XVI underpayments in effect at the time we published the interim final rules to a 9-month resource exclusion. Our rules at § 416.1233 specifically state that we exclude from countable resources the unspent portion of any title II or title XVI retroactive payment for 9 months "following the month of receipt" (6 months for retroactive payments received before March 2, 2004). Also, the notice that we send with the installment payment explains how the resource exclusion period is applied.

Comment: One commenter asked whether the unpaid past-due benefits would accrue interest until the installment payments are paid in full to the SSI recipient.

Response: We have no statutory authority to pay interest on unpaid benefits, including those being held for future installments.

Comment: One commenter stated that a recipient who is awarded SSI benefits 11 months after filing should not be subject to the installment payment provisions, since the provision only was applicable because it had taken us an additional 6 weeks to complete the award and payment process.

Response: Since section 1631(a)(10) of the Act requires us to compute the amount of past-due SSI benefits before determining if installment payments are required, we determine whether the

installment payment provisions apply at the time the claim is paid. The number of months from the date of filing an application until a determination or decision is made and the reason for the amount of past-due benefits are not factors in the computation.

Section 416.545(b) Paying Large Past-Due Benefits in Installments—Installment Formula

Comment: One commenter stated that we should change the formula for determining when benefits must be paid in installments to eliminate the reference for including any State supplementary payments a recipient may receive since a recipient who receives a State supplementary payment would automatically have that amount factored into the formula used in determining whether installments apply.

Response: We did not adopt this comment. Section 1631(a)(10)(D) of the Act specifies that the benefits subject to installment payments "includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a)" of the Act, and "under section 212(b) of Public Law 93–66." Accordingly, any federally administered State supplementary payments payable to the recipient must be included in the amount of past-due benefits when we determine if the amount is large enough to require installment payments. We believe the interim final rules accurately reflected the statutory formula and avoided potential confusion about whether State supplementation payments are included in applying the formula. Further, not all States provide a supplementary payment to the SSI benefit, so it is important to include references to the State supplement when providing the formula for dedicated account requirements, as well as the formula for the installment payment requirement.

Comment: Another commenter asked that we make the formula clearer by adding language to indicate that the amount of past-due benefits used in determining whether installment payments are required is based upon the amount of past-due benefits remaining after any reimbursement has been made to a State for interim assistance.

Response: We adopted this comment and are adding the parenthetical phrase "reimbursement to States for interim assistance" to § 416.545(b). We are also adding this phrase in § 416.546(a), which sets forth a similar formula used to determine whether a dedicated account is required.

Comment: One commenter suggested that we clarify the formula to indicate the amount of past-due benefits subject to installments that is determined after interim assistance is paid to States.

Response: We added the phrase "reimbursement to States for interim assistance" to both §§ 416.545(b) and 416.546(a) after the phrase "§ 416.525," which is the section that explains reimbursement to States for interim assistance.

Section 416.545(c) Paying Large Past-Due Benefits in Installments—Exception—When Installment Payments Are Not Required

Comment: Another commenter asked that we clarify when the exceptions to the installment payment process apply. The commenter stated that the interim final rules did not make clear when the 12-month period starts for determining whether death is likely to result from a medically determinable impairment within 12 months or when a recipient is likely to remain ineligible for 12 months.

Response: We did not adopt this comment. Section 1631(a)(10)(C) of the Act states and § 416.545(c) reflects that the installment requirement does not apply to a recipient who, at the time we determine that past-due benefits are payable, meets either of these two exceptions. We believe the language is clear that we consider the 12-month period beginning after we determine the recipient's eligibility for payment of past-due SSI benefits.

Section 416.545(d) Paying Large Past-Due Benefits in Installments—Exception—Increased First and Second Installment Payments

Comment: We received several comments objecting to the interim final rules because they did not include attorney fees as an expense for which we may increase the first or second installment payment.

Response: Section 1631(a)(10)(B)(iii) of the Act lists six kinds of debt or expenses for which we may increase an installment payment. Congress itemized certain outstanding debts relating to food, clothing, shelter, and medical treatment, or current or anticipated expenses relating to medical treatment, and the purchase of a home. The statute provides that we may increase the first and second installment payments by the amount of such debt or expenses beyond the normal statutory limit. Congress did not include attorney fees as one of the items that we could consider to increase the installment payments.

In addition, to the extent that the comment related to attorney fees payable under section 206 of the Act, after we published the interim final rules, Congress changed the law to provide that past-due benefits for purposes of dedicated accounts and installment payments include only those benefits remaining after the withholding of attorney fees. We have revised final § 415.545(b) to reflect that change in the Act. Our longstanding policy also has considered attorney fees incurred in the pursuit of a child's disability claim as an example of an expense that could properly be considered payable from a dedicated account. We are revising § 416.640(e)(2)(iii) to add that provision to our rules. Together, these two provisions greatly reduce, if not eliminate, the need to increase installment payments based on attorney fees payable.

Comment: A commenter believed that we should broaden the exceptions for increasing the installment payments and include various expenses, such as transportation, child support, or education.

Response: The statute is very explicit as to what expenses we may consider to find an exception to the limit on the first and second installment payments. The statute affords us no discretion to add to these exceptions to the basic rule.

Comment: Another commenter asked what criteria we use to determine whether we will make an increased installment payment due to certain debts or expenses.

Response: Since the statute refers to "outstanding debt" and "current or anticipated expenses," we require evidence from an SSI recipient that shows that payment is due for a particular item or that an obligation is being or will be incurred. The evidence could include, but is not limited to, outstanding bills from electric or utility companies, overdue rent bills, or letters of intent for purchasing a home. Under certain circumstances, we may not approve an increase to the installment payment based on documented debts that we consider excessive. The recipient may appeal that determination.

Section 416.546 Payment Into Dedicated Accounts of Past-Due Benefits for Eligible Persons Under Age 18 Who Have a Representative Payee

Comment: One commenter suggested eliminating the reference to including any federally administered State supplementation in the formula for determining whether a dedicated account must be established.

Response: We are not adopting this comment because section 1631(a)(2)(F)(i)(II) of the Act defines

benefits for purposes of that provision to "include State supplementary payments" that we make.

Comment: Another commenter questioned our interpretation of the dedicated account formula. The commenter felt the statute required only the deposit of the amount of past-due benefits, which exceeded the formula, not the entire amount.

Response: We did not adopt this comment because we believe the statutory language requires deposit of the entire amount of past-due benefits if the entire amount exceeds 6 times the FBR. Section 1631(a)(2)(F) of the Act requires the representative payee to establish a dedicated account "into which such benefits shall be paid" if the amount of the past-due benefits exceeds 6 times the maximum FBR. The language does not say that the representative payee must establish a dedicated account into which the amount that exceeds 6 times the maximum FBR shall be paid.

Comment: Three commenters expressed concern that if an institution required a minimum deposit to open an account, many recipients (or representative payees) would not have funds available to open a dedicated account in a financial institution as a prerequisite to payment of past-due benefits, as required by the interim final rules.

Response: Our experience with the dedicated account provision is that recipients and representative payees have not generally had difficulty opening dedicated accounts due to the lack of funds. If we receive reports that SSI recipients are unable to establish the required accounts, we will enter into a dialogue with national banking organizations concerning the requirements of the law. We will encourage their member banks to accept our notice of past-due benefits to recipients as a guarantee of the deposit of a Federal payment in excess of $3,000 into their institution and to waive any minimum deposit amounts or fees to establish an account for such recipients.

Section 416.570 Adjustment—General Rule

Comment: One commenter suggested that the rule state that an underpayment cannot be used to recover an overpayment that occurred prior to the computation of the underpayment.

Response: We did not adopt the comment. Section 1631(b)(1) of the Act and § 416.543 of our rules allow the use of an underpayment to recover an overpayment that occurred in a different period. Congress did not change this authority when it enacted the dedicated account provision. Accordingly, the rule applies to situations where past-due amounts must be deposited into a dedicated account.

We may recover an overpayment before we determine whether the past-due benefits must be deposited into the dedicated account. If recovery of the overpayment reduces past-due benefits below the formula, a dedicated account is not required. However, once these funds are deposited into the dedicated account, they may not be used to repay an overpayment to us.

Section 416.640(e) Dedicated Accounts for Eligible Persons Under Age 18

Comment: One commenter stated we must clarify "misapplication" in the dedicated account rules and how it relates to the misuse rules.

Response: We did not adopt this comment because we believe the regulatory definition of misapplication is sufficiently clear. Section 416.640(e)(4) of our rules defines misapplication of benefits as the use of funds from a dedicated account in any manner not authorized by our rules. It provides that when a representative payee knowingly uses dedicated account funds for the recipient for expenditures that are not permitted, that representative payee will be liable in an amount equal to the total amount of the misapplied funds.

Section 1631(a)(2)(A)(iv) of the Act defines misuse as occurring when a representative payee receives payment under title XVI for the use and benefit of another person and converts the payment, or any part of it, to a use other than for the use and benefit of the recipient. As reflected in these definitions, misapplication of benefits is different than misuse of benefits because misapplied benefits might benefit the recipient, but were not used for allowable expenses.

Comment: One commenter questioned the absence of any provision in § 416.640(e) dealing with the penalty for misapplication of funds from a dedicated account by a recipient who is his or her own payee, as provided in section 1631(a)(2)(F)(ii)(III)(bb) of the Act, as added by section 213 of the PRWORA.

Response: The version of the PRWORA passed by the House of Representatives contained a provision to reinstate the penalty for the transfer of resources for less than fair market value at section 1613(c) of the Act. The dedicated account provision cross-referenced section 1631(c) as the penalty applicable when a recipient who is his or her own payee misapplies funds from a dedicated account (*i.e.,* misapplied funds were to be considered transfers of resources resulting in a period of ineligibility, the length of which is related to the amount of funds misapplied). When the provision to reinstate the penalty for transfer of resources was dropped from the Conference Committee version, the cross-reference in section 1631(a)(2)(F)(ii)(III)(bb) to section 1613(c) was not deleted, nor was an alternative penalty provision substituted. As a result of this drafting error, there was no penalty for a recipient who is his or her own payee and misapplies funds from a dedicated account because there was no penalty for transfers of resources for less than fair market value in the SSI program.

Subsequently, in 1997, Congress passed the BBA, which provided that if a recipient becomes his or her own payee and misapplies funds from a dedicated account, future benefits will be withheld in the amount of the misapplied funds. Although Congress passed this amendment after the publication of the interim final rules, we are not requesting public comment on that provision in these final rules because we are merely conforming the regulations to the statutory change and not making any discretionary policy changes.

Comment: One commenter questioned why this provision applies primarily to children, and why children's cases should be treated differently.

Response: In section 213 of the PRWORA, Congress specifically addressed eligible persons under the age of 18 with representative payees. This was a legislative choice. Public Law 104–193.

Comment: One commenter expressed the opinion that "requiring the beneficiaries to have a bank account seems like an impermissible tying arrangement since it has nothing to do with disability."

Response: The commenter's specific objection is not clear. However, as we stated above, the statutory provisions regarding dedicated accounts are not discretionary. We must implement this mandatory provision in the statute.

Comment: One commenter expressed the opinion that because we require a representative payee to maintain two separate accounts, we should pay the bank service charges at least on the dedicated account.

Response: This provision is required by statute. The statute does not authorize us to pay bank service charges.

Comment: Two commenters requested that we revise § 416.640(e)(1) to allow a

dedicated account to be in the form of a trust.

Response: We did not adopt this comment. These accounts are intended to ensure ready access to the funds and to facilitate the monitoring of representative payee accountability. Furthermore, § 1613(e), except in limited circumstances defines trust assets as resources; whereas, funds in dedicated accounts are excluded from resources for the nine-month period.

By law, trusts are administered by trustees according to the terms of the trust. In many cases, a trustee would not be the representative payee. Thus, if a dedicated account were established in the form of a trust, the representative payee might have no authority over the use of benefits in the trust. In that situation, we would be unable to fulfill the requirement that we monitor and hold the representative payee liable for the misapplication of funds.

Comment: One commenter requested that we revise this section of the interim final rules to provide an exception for situations in which dedicated account funds will not be able to be used in a manner authorized by this provision, *e.g.,* when a child is healthy but mentally challenged, with virtually no medical expenses and no plans for education or job training.

Response: This section implements section 1631(a)(2)(F)(i) of the Act, which neither provides nor gives us authority to make exceptions of this type. We can only approve impairment-related expenses.

Comment: Several commenters requested that we revise or clarify this section to allow the use of dedicated account funds for basic living expenses such as food, rent, utilities, and replacing lost family income if a parent cannot work full time because of a child's impairments.

Generally, these commenters suggested that disabled children's impairments are exacerbated by living in impoverished conditions and, therefore, we should consider using these funds to provide for basic needs as an authorized impairment-related expenditure. One commenter opined that the requested revision would make § 416.640(e)(2) consistent with existing § 416.640(a).

Response: We did not adopt the comment to revise § 416.640(e)(2) in the manner requested. Section 1631(a)(2)(F)(ii)(II) of the Act allows expenditures from dedicated accounts for specific items or services and for other items or services that we consider to be appropriate, provided that they benefit the eligible recipient and are related to his or her impairment(s). However, based on these public comments, we revised § 416.640(e)(2)(iii) specifically to include the use of funds to prevent malnourishment or homelessness and to pay attorney fees incurred in pursuit of the child's disability claim as types of items and services that could be considered appropriate expenditures.

We did not make a complete list of "other items and services" because we believe each situation must be considered on a case-by-case basis. The procedural instructions we issued to our field offices contain examples of a broad range of items and services that could be allowable as impairment-related. Some examples are special foods for children with special dietary needs, increased electrical bills resulting from needed mechanical devices that must run constantly, attorney fees in pursuit of the child's disability claim, and emergency situations in which the unavailability of dedicated account funds for basic living expenses may result in the child's becoming homeless or malnourished.

We do not believe that it is consistent with the statutory restrictions placed on the use of dedicated account funds for basic living expenses to be considered impairment-related except in limited circumstances and situations. In most situations, ongoing monthly payments can and should be used to pay for the recipient's basic needs, as provided in § 416.640(a).

Comment: One commenter requested that we revise § 416.640(e)(2) to make it consistent with § 416.545(d), which allows for accelerated installment payments if the recipient has outstanding debts for food, clothing, or shelter, or current or anticipated expenses for the purchase of a home.

Response: We did not make the suggested change. Section 416.545(d) of our rules implements a statutory exception to the defined amount of installment payments. We may increase the amount of the first and second installments when a recipient has outstanding debts or anticipated expenses. Section 1631(a)(10)(B)(iii) of the Act. Among the specified items are outstanding debts for food, clothing, or shelter, and current or anticipated expenses for the purchase of a home. However, there is no similar statutory exception in section 1631(a)(2)(F) or authority for us to consider the payment of outstanding debts for food, clothing, or shelter, or the purchase of a home in the recipient's name as allowable expenditures, unless those items are related to the recipient's impairment. The general installment payment rule of section 1631(a)(10) applies to all SSI recipients. The specific dedicated account rule of section 1631(a)(2)(F) applies only to payments to representative payees of recipients under the age of 18. That Congress enacted these two provisions in the same legislation and did not make them uniform gives rise to the logical inference that the more restrictive dedicated account language takes precedence with respect to recipients under the age of 18 with representative payees even when the past-due benefits are being paid into the dedicated account in installments. In cases where a recipient under age 18 has a representative payee and is eligible for past-due benefits in an amount prescribed in section 1631(a)(10)(A) of the Act, both the installment payment and the dedicated account provisions will apply, and past-due benefits will be paid in installments into a dedicated account established by the representative payee. Public Law 104–193.

Comment: Two commenters requested that we revise § 416.640(e)(2)(iii) to include a comprehensive list of expenses that we determine to be allowable. The commenters believed that the list should include the basic necessities of life such as food, clothing, and shelter, as well as child care, respite care, items related to education, and participating in community and family activities such as summer camp. Generally, the commenters were concerned that our field office employees had too much discretion and might make arbitrary or conflicting decisions.

Response: We disagree with the premise of these comments. We decided not to exclusively itemize specific items or services that we could consider allowable expenditures because, except for education, job skills training, and medical treatment, section 1631(a)(2)(F)(ii)(II) of the Act requires that the item or service benefit the disabled SSI recipient and be related to that recipient's impairment. Since disabled recipients do not have universally applicable impairment-related needs or might not benefit universally from certain items or services, we conclude that we should review these expenditures on a case-by-case basis. Further, Congress specified in section 1631(a)(10) of the Act that we could increase installment expenses in view of debts for basic living expenses while it chose not to include similar language in section 1631(a)(2)(F) of the Act. We interpret this as indicating Congress' intent not to allow basic living expenses generally to be paid from dedicated account funds.

Thus, rather than include an extensive list of specific examples in the interim final rules, we provided general procedural instructions for the field personnel. We issued instructions to our field offices to make case-by-case determinations based on the payee's explanation about how an item or service would benefit the recipient and how it is related to the recipient's impairment(s). We included a broad non-inclusive list of examples of how some items or services could be related to certain impairments.

Some of the items that the commenters wanted included in § 416.640(e)(2)(iii), such as child care, respite care, items related to education, and participating in community and family activities could readily be considered beneficial to the recipient as explained in our procedural guidelines. However, as stated in previous responses, they are not presumptively impairment-related. Therefore, general expenses for food, clothing, and shelter cannot necessarily be paid from dedicated account funds. Ongoing monthly payments can and should be used to pay for the recipient's basic needs, as provided in § 416.640(a). Nevertheless, we expanded the list of allowable expenses in § 416.640(e)(2)(iii) to include attorney fees incurred in the pursuit of the child's disability claim, and basic living expenses where emergency situations may result in the child becoming homeless or malnourished without these funds being made available.

Comment: Two commenters wanted written instructions for representative payees, as well as our employees, about the proper use of dedicated account funds.

Response: We did not adopt the comment. We do not believe such written instructions would be appropriate in our regulations, but we have developed notices and information in "A Guide for Representative Payees" (*http://www.socialsecurity.gov/pubs/10076.pdf*) regarding the proper use of dedicated account funds.

Comment: Two commenters requested that we establish a time frame for pre-approval of expenses from dedicated account funds.

Response: We did not adopt this comment. Payees are not required to obtain prior approval for dedicated account expenditures. However, if a payee is uncertain whether an expenditure is allowed, the payee should seek our approval before making the expenditure. We explain this issue further in our publication "A Guide for Representative Payees." For instance, the Guide notes that payees "should first get approval from us for these kind of expenses" (*i.e.,* expenses related to the child's disability that we determine are appropriate).

Comment: One commenter stated that the potential for second-guessing the expenditures of thousands of parents, aside from the undue administrative burdens this could place on us, is quite real and suggested we make a presumptive rule that any expenditure of less than $1,000 should be presumed valid and not subject to review.

Response: The statutory language does not authorize us to establish such a presumption that would exempt expenditures from the misapplication rules. Accordingly, we did not adopt this comment.

Comment: Many commenters were concerned that attorney fees were not listed as a permitted expenditure from dedicated account funds. They urged that many SSI recipients are found disabled only through the efforts of an attorney.

Response: As noted above, attorney fees incurred in pursuit of the child's disability claim may be considered "impairment-related" and a permitted expenditure of dedicated account funds. We have long included this provision in our operating instructions. However, based on the public comments, we included attorney fees related to the pursuit of the child's disability claim in § 416.640(e)(2)(iii) as an expenditure that could be considered as appropriate. As noted previously, section 1631(a)(2)(F)(i)(II) of the Act provides for paying attorney fees from past-due benefits and for determining whether a dedicated account is required, only after deducting such fees.

Section 416.1247 Exclusion of a Dedicated Account in a Financial Institution

Comment: Two commenters opined that the resource exclusion for dedicated accounts in § 416.1247 should continue to apply after a recipient's eligibility has terminated. Not allowing continuation of the exclusion could become a bar to re-eligibility.

Response: Section 1613(a)(12) of the Act provides an exclusion from resources of "any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1631(a)(2)(F)." The maintenance requirements in section 1631(a)(2)(F) deal with restrictions on the use of funds in the dedicated account and requirements of the payee to report on and account for activity respecting funds in the dedicated account. These restrictions and accounting requirements continue during periods of suspension from SSI eligibility and, accordingly, the resource exclusion continues during periods of suspension due to ineligibility, as long as the recipient's eligibility has not been terminated.

When a recipient's eligibility terminates, the restrictions on the use of funds in a dedicated account and the payee's responsibility to account for and report on activity in such an account also terminate, and the resource exclusion ends. Once eligibility terminates, any special status given to funds in a dedicated account and the dedicated account designation itself end.

Comment: One commenter was concerned that, although dedicated accounts are excluded from resources for SSI purposes, they could be a resource for Medicaid purposes, causing ineligibility.

Response: Dedicated accounts will be excluded for most States for which we make Medicaid eligibility determinations or that use SSI rules to make their own Medicaid eligibility determinations. For the 11 States that make their own Medicaid eligibility determinations using their own rules, dedicated accounts may be excluded from resources at the option of each State.

Explanation of Revisions

These final rules reflect the following minor changes to the interim final rules:

- We added a new second sentence to § 416.545(a) to clarify current policy. The interim final rule was silent on our policy and procedures for issuing additional past-due benefits that become payable while a recipient is receiving installment payments so we are including language in § 416.545(a) to explain this process more fully.
- We amended the first sentence of §§ 416.545(b) and 416.546(a) to include additional language as a result of the public comments.
- We amended § 416.640(e)(2)(iii) by adding an additional sentence to the end of the section to include attorney fees and expenditures to prevent malnourishment and homelessness as dedicated account expenditures that could be considered appropriate.

These final rules make the following changes based on statutes enacted subsequent to the interim final rules:

- We amended §§ 416.545(b) and 416.546(a) to reflect the SSPA provision to specify that past-due benefits for dedicated account purposes and installment payment purposes are those benefits remaining after any withholding for payment of attorney fees.

• We amended § 416.545(b) to reflect changes based on the nondiscretionary provision of section 7502 of the DRA to specify the formula for past-due benefits for payment of installments will be an amount which equals or exceeds 3 times the maximum monthly benefit payable plus any federally administered State supplementation.

• We amended § 416.546(b) to reflect the technical amendments in section 5522(b) of the BBA to clarify what subsequent past-due benefits may be deposited into a dedicated account by the representative payee.

• We amended § 416.546(e)(4) to reflect the technical amendments in section 5522(b) of the BBA to clarify how we treat misapplication of benefits in a dedicated account by a recipient who is his or her own payee.

Except for the changes discussed above and set out below, the interim final rules remain unchanged and are adopted as final.

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of this rule, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for the three changes we are making based on legislation enacted after we published the interim final rule because these changes all are required by the statutes. The statutes do not give us any discretion in implementing the provisions. Therefore, opportunity for prior comment is unnecessary, and we are including these changes in this final rule.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities, because they affect persons or States only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These final rules do not create any new, or affect any existing, collections, and therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Dated: September 28, 2010.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending subparts E and F of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 2. Amend § 416.545 by adding a new second sentence following the first sentence in paragraph (a) and by revising the first sentence of paragraph (b) to read as follows:

§ 416.545 Paying large past-due benefits in installments.

(a) * * * If an individual becomes eligible for past-due benefits for a different period while installments are being made, we will notify the individual of the amount due and issue these benefits in the last installment payment. * * *

* * * * *

(b) * * * Installment payments must be made if the amount of the past-due benefits, including any federally administered State supplementation, after applying § 416.525 (reimbursement to States for interim assistance) and applying § 416.1520 (payment of attorney fees), equals or exceeds 3 times the Federal Benefit Rate plus any federally administered State supplementation payable in a month to an eligible individual (or eligible individual and eligible spouse). * * *

* * * * *

■ 3. Amend § 416.546 by revising paragraphs (a) and (b) to read as follows:

§ 416.546 Payment into dedicated accounts of past-due benefits for eligible individuals under age 18 who have a representative payee.

* * * * *

(a) For an eligible individual under age 18 who has a representative payee and who is determined to be eligible for past-due benefits (including any federally administered State supplementation) in an amount which, after applying § 416.525 (reimbursement to States for interim assistance) and § 416.1520 (payment of attorney fee), exceeds six times the Federal Benefit Rate plus any federally administered State supplementation payable in a month, this unpaid amount must be paid into the dedicated account established and maintained as described in § 416.640(e).

(b) After the account is established, the representative payee may (but is not required to) deposit into the account any subsequent funds representing past-due benefits under this title to the individual which are equal to or exceed the maximum Federal Benefit Rate (including any federally administered State supplementation).

* * * * *

Subpart F—[Amended]

■ 4. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 5. Amend § 416.640 by adding an additional sentence to the end of paragraph (e)(2)(iii) and an additional sentence to the end of paragraph (e)(4) to read as follows:

§ 416.640 Use of benefit payments.

* * * * *

(e) * * *

(2) * * *

(iii) * * * Attorney fees related to the pursuit of the child's disability claim and use of funds to prevent malnourishment or homelessness could be considered appropriate expenditures.

* * * * *

(4) * * * In addition, if a recipient who is his or her own payee knowingly

misapplies benefits in a dedicated account, we will reduce future benefits payable to that recipient (or to that recipient and his or her spouse) by an amount equal to the total amount of the misapplied funds.

* * * * *

[FR Doc. 2010–33272 Filed 1–4–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA–2009–0410 (HM–233B)]

RIN 2137–AE57

Hazardous Materials Transportation: Revisions of Special Permits Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is revising its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.

DATES: *Effective date:* The effective date of these amendments is March 7, 2011. *Voluntary compliance date:* Voluntary compliance with the provisions of this final rule is authorized January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Andrews or Mr. T. Glenn Foster, Standards and Rulemaking Division, PHMSA, at (202) 366–8553 or Mr. Ryan Paquet, Approvals and Permits Division, PHMSA, at (202) 366–4511.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. (49 U.S.C. 5103) Section 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal hazardous materials transportation law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazmat law and issuing special permits.

The HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities often provide a greater level of safety than required under the regulations. In addition, each applicant granted a special permit undergoes a safety fitness evaluation, further assuring the safety of transportation under the special permit. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

The procedures governing the application, issuance, modification, and termination of special permits are found at Subpart B of 49 CFR Part 107 (*see* §§ 107.101–107.127). As currently specified in § 107.105(c), an application must include the following information that is relevant to the special permit proposal: (1) A citation of the specific regulation from which the applicant seeks relief; (2) specification of the proposed mode or modes of transportation; (3) a detailed description of the proposed special permit (*e.g.*, alternative packaging, test, procedure or activity) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents; (4) a specification of the proposed duration or schedule of events for which the special permit is sought; (5) a statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period; (6) if the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons; (7) identification and description of the hazardous materials planned for transportation under the special permit; (8) description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit; (9) for alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations; and (10) when a Class 1 material is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), certification by an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

In addition, the applicant must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation or, if the required safety level does not exist, that the special permit is consistent with the public interest. To this end, at a minimum, the application must include: (1) Information on shipping and incident history and experience relating to the application; (2) identification of increased risks to safety or property that may result if the special permit is granted and a description of measures that will be taken to mitigate that risk; and (3) analyses, data, or test results demonstrating that the level of safety expected under the special permit is equal to the level of safety achieved by the regulation from which the applicant seeks relief.

PHMSA independently reviews and evaluates the information provided in the special permit application to determine whether the special permit will achieve an equal level of safety as provided by the HMR or, if a required level of safety does not exist, that the special permit is consistent with the public interest. This review includes a technical analysis of the alternative proposed in the application, an

evaluation of the past compliance history of the applicant (including incident history, enforcement actions, *etc.*), and coordination, as applicable, with the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), and the U.S. Coast Guard to gather additional information relevant to the application and ensure the agency's concurrence with PHMSA's conclusions.

II. Notice of Proposed Rulemaking

On July 27, 2010, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 43898) proposing to revise its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA also proposed to provide an on-line application option.

III. Overview of Amendments

In this final rule, PHMSA is revising the special permits application procedures by clarifying existing requirements and requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. The revisions to the application procedures will allow PHMSA to more effectively assess the level of safety that will be achieved under a special permit. The revisions will also enable PHMSA to better evaluate the fitness of an applicant, including its ability to safely conduct the operations that may be authorized under a special permit. The additional information will further enhance PHMSA's ability to monitor operations conducted under a special permit and to take corrective actions if necessary to ensure safety. In addition, PHMSA is removing the word "exemption" from Part 107 and from the definition of a "special permit" in § 107.1, Definitions, and § 171.8, Definitions and Abbreviation because the term is inaccurate. Further, § 107.1 is being revised following the publication of a final rule entitled "Hazardous Materials: Incorporation of Special Permits Into Regulations," published on May 14, 2010 (75 FR 27205) under Docket No. PHMSA–2009–0289 (HM–233A). The May 14, 2010 final rule revised the definition for "special permit" in 49 CFR part 107 to permit the Associate Administrator of Hazardous Materials Safety to designate signature authority at the Office Director level. The same revision to the definition for "special permit" was made in § 171.8. Both revisions are reflected in this final rule.

Finally, to increase flexibility and reduce the paperwork burden on applicants, in this final rule, PHMSA is implementing an on-line application capability for special permits, and is authorizing electronic service for several administrative practices and procedures.

IV. Discussion of Comments

In response to the July 27, 2010 Notice of Proposed Rulemaking, PHMSA received comments from the following individuals and organizations:

Air Products
American Coatings Association
American Trucking Associations
Association of American Railroads
Association of HAZMAT Shippers
The Chlorine Institute
Commercial Vehicle Safety Alliance
Council on Safe Transportation of Hazardous Articles
Dangerous Goods Advisory Council
DELPHI
Gas and Welding Distributors Association
Industrial Packing Alliance of North America
Institute of Makers of Explosives
Matheson
National Propane Gas Association
Norris Cylinders
Northern Air Cargo
PPG Industries
Radiopharmaceutical Shippers and Carriers Conference
Stericycle, Inc.
Veolia Environmental Services

Most commenters express support for the Department's efforts to revise the procedures for applying for a special permit and allow an option for on-line application. However, many commenters question the justification for PHMSA's proposals to require additional data requirements such as the DUNS number, name of the company CEO, and known locations of where a special permit will be used. We address these comments under the heading entitled "Section-by-Section Review" in this rule. In addition, PHMSA also received three requests to extend the period to allow for the public to submit comments. Further, we received comments pertaining to fitness determinations discussed at a public meeting held at DOT headquarters on August 8, 2010. However, these comments are beyond the scope of this rulemaking and are not being addressed in this rulemaking.

V. Section-by-Section Review

Following is a section-by-section review of the amendments in this final rule.

Part 105

Section 105.35

Section 105.35 specifies the methods by which PHMSA may serve documents during the course of its proceedings, such as registered mail, certified mail, or publication in the **Federal Register**. In an effort to provide an additional alternative to these methods, in the NPRM, PHMSA proposed adding a new paragraph (a)(4) to authorize electronic service if consented to in writing by the party to be served, and electronic service for all special permit and approval actions. PHMSA received comments from the Institute for Makers of Explosives (IME) and the American Truckers Associations (ATA) supporting the incorporation of electronic filing for special permit applications. PHMSA did not receive any comments opposing this requirement. Therefore, we are adopting this requirement as proposed.

Part 107

Section 107.105

Section 107.105 specifies the requirements for submitting an application for a special permit or a modification of a special permit. In the NPRM, we proposed several revisions pertaining to the application of modification of a special permit that would affect this section. For instance, to provide additional clarification, we proposed to revise paragraph (a) to require that all supporting documentation be written in English. PHMSA received no adverse comments to this proposed requirement, and is adopting this revision as proposed.

PHMSA proposed to revise paragraph (a)(1) of this section to require a table of contents be included in the application and to remove the requirement that applications must be submitted in duplicate. PHMSA received comments from PPG Industries, Dangerous Goods Advisory Council (DGAC), COSTHA, American Coatings Association, and DELPHI opposing the requirement to include a table of contents with a special permit application. One commenter suggests requiring a table of contents only for applications greater than 10 pages, while other commenters suggest replacing the table of contents with a checklist. While PHMSA appreciates the suggested alternatives, we believe a table of contents is the most effective tool for providing an efficient review of special permit applications, especially during the fitness review process, and is therefore adopting this revision as proposed.

In paragraph (a)(1)(iii), PHMSA proposed to provide the option for

applicants to submit applications on-line through the PHMSA Web site. PHMSA received comments from Veolia Environmental Services, IME, ATA, and COSTHA in support of providing applicants the option of submitting special permit applications on-line. PHMSA did not receive any comments opposing this requirement. Therefore, this requirement is being adopted as proposed.

In paragraph (a)(2) PHMSA proposed to request additional information about the applicant, including the physical address(es) of all known locations where the applicant will use the special permit, a point of contact for information about the special permit, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. PHMSA received comments from Veolia Environmental Services, PPG Industries, DGAC, IME, ATA, Norris Cylinders, COSTHA, Northern Air Caro, Association of Hazmat Shippers, American Coatings Association, Radiopharmaceutical Shippers and Carriers Conference (RSCC), Stericycle Inc., DELPHI, Association of American Railroads, Matheson, and Air Products objecting to some or all of these requirements. Many of these commenters oppose requiring applicants to list the physical addressees of all known locations where the special permit would be used, stating that it would be impossible for applicants to correctly identify all of the locations where a special permit might be utilized. Other commenters express concern that such a list of known locations could number in the hundreds or thousands. We reiterate that our intention is to conduct as thorough a fitness evaluation of a company as possible. However, we acknowledge that all future locations may not be known at the time of the application. Therefore, for clarification, we stress that we are requiring applicants to report all known facilities that would use the special permit at the time of application. In addition, commenters generally did not believe that providing PHMSA with the name of the company CEO and a DUNS number should be necessary when applying for a special permit. We disagree. PHMSA believes that requiring the name of the company CEO and the DUNS number is necessary to ensure the proper identification and a thorough fitness evaluation of the location(s) where the special permit would be used. In addition, COSTHA recommends that PHMSA use the Federal taxpayer ID number in lieu of a DUNS number. PHMSA notes that the Federal taxpayer ID is often a person's social security number, which could present unintended consequences such as identify theft for companies, especially small businesses. Therefore, PHMSA is incorporating this requirement as proposed.

For clarification, we editorially revised the language in paragraph (a)(3) to specify that if the applicant is not a resident of the United States, the applicant must identify and designate an agent for service in accordance with § 105.40.

In paragraph (a)(4), for a manufacturing special permit, PHMSA proposed to require the street address of each of the facilities of the applicant where manufacturing under the special permit would occur, and, if applicable, the symbol of the packaging manufacturer ("M" number). PHMSA did not receive any comments opposing this requirement. Therefore, we are adopting this revision as proposed.

PHMSA proposed adding a new paragraph (a)(5) to require an applicant who must register in accordance with Subpart F or G of Part 107 to provide its registration number or the name of the company to which the registration number is assigned if different from the applicant. PHMSA also proposed to require applicants to provide a statement that the registration requirements are not required when these requirements do not apply. PHMSA received comments from the Association of HAZMAT shippers and RSCC objecting to this requirement. The commenter states that requiring a registration number for a special permit application could encourage companies already out of compliance with the registration requirement to decide against applying for a special permit. The RSCC states that whether a company is registered should have no bearing on applying for a special permit. While PHMSA acknowledges the arguments of the commenters, we believe that the requirement to include a registration number or statement that the applicant does not require registration will provide PHMSA with the necessary information to determine if the applicant is fit to ship hazardous materials under a special permit. In addition, the current requirement in § 107.503(b) states that no person may engage in the manufacture, assembly, certification, inspection, or repair of a cargo tank vehicle under the terms of a DOT special permit unless the person is registered with PHMSA. PHMSA believes that the vast majority of the hazmat community is diligent in complying with the hazmat registration requirement and providing a registration number or statement that the applicant does not require registration at the time of the special permit application has a minimal impact. Therefore, PHMSA is adopting this revision as proposed.

In the NPRM, PHMSA proposed to revise, re-designate, and add several new paragraphs to paragraphs (c) and (d) of § 107.105 to ensure that a special permit application includes sufficient information on shipping and incident history, experience, and increased safety risk relating to the initial application, modification or renewal of a special permit. Specifically, in paragraph (c)(2), PHMSA proposed to require a description of all operational controls that would apply to the mode or modes of transportation that would be utilized under the special permit. For example, for a shipment of ammonia solutions, the operational controls may include the driver of a transport vehicle and the consignee being trained not to enter the transport vehicle until the ammonia vapors have dissipated. PHMSA received comments from IME and the American Coatings Association objecting to this proposal. IME expresses concern that the requirement for a description of operational controls for all modes of transportation was too vague. The American Coatings Association states that the proposed requirement would be unfairly burdensome because the information requested could potentially include a significant investment of time to complete. While PHMSA understands the concerns of the commenters, current regulations require operational controls be established when applying for a special permit. The purpose of this requirement is to provide us with further information so that we can determine whether the proposed special permit meets the safety equivalency standard set out in paragraph (d). Therefore, we are incorporating this requirement as proposed.

PHMSA proposed to revise paragraph (c)(3) to require that alternative hazard communication, including labeling and marking requirements, be included in the detailed description of the proposed special permit. PHMSA received comments from the Association of HAZMAT Shippers and the American Coatings Association objecting to these requirements. Specifically, both commenters indicate that such requirements are already covered in part 172 of the HMR. While PHMSA agrees that these requirements can be found in other sections of the HMR, we believe it is necessary to require this information with respect to specific special permit applications to ensure

that these shipments are being transported in a safe manner. Therefore, PHMSA is incorporating this requirement as proposed.

PHMSA proposed to revise paragraph (c)(5) to require, for transportation by air, a statement outlining the reason(s) the hazardous material would be transported by air if other modes are available. PHMSA received comments from PPG Industries, DGAC, IME, COSTHA, Association of HAZMAT Shippers, RSCC, and DELPHI objecting with these proposed requirements. Commenters reasoned that if PHMSA believes a shipment is safe for transportation under one mode, it should be considered safe for all modes. Other commenters expressed concern that they would no longer be able to make shipments by air. We disagree. We believe that the transportation of hazardous materials by air presents unique circumstances not found in transportation by rail, highway, or water, and note that the HMR contain several air-specific requirements. In addition, we emphasize that this requirement as proposed requests a justification from applicants for shipments under a special permit by air, but does not prohibit such shipments. Therefore, in this final rule, we are adopting this requirement as proposed.

PHMSA proposed to revise paragraph (c)(7) to require the quantity of each hazardous material be indicated in addition to the identification and description of the hazardous materials planned for transportation under the special permit. PHMSA received comments from PPG Industries, DGAC, American Coatings Association, and Stericycle Inc. objecting to this proposed requirement. Commenters note that any such quantity would be an estimate, and potentially inaccurate. PHMSA acknowledges that the specific quantity of each hazardous material planned for transportation under a special permit may not be known during the application process. However, we believe an estimate based on the applicant's best available information will enable PHMSA to better evaluate the applicant's ability to safely transport hazardous materials under the conditions of the special permit. Therefore, in this final rule, PHMSA is adopting this requirement as proposed with the additional clarification that an estimate of the quantity of each shipment of the hazardous material planned for transportation is required.

In addition, PHMSA proposed to re-designate paragraph (c)(10) as new paragraph (c)(13), and add new paragraphs (c)(10), (c)(11) and (c)(12) to require the applicant to submit: (1) An estimate of the number of operations expected to be conducted or the number of shipments expected to be transported under the special permit; (2) an estimate of the number of packagings expected to be manufactured under the special permit; and (3) a statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action. PHMSA received comments from DGAC, IME, ATA, COSTHA, Association of HAZMAT Shippers, RSCC, and Stericycle Inc. objecting to the proposed requirement that applicants estimate the number of shipments expected to be transported under a special permit. Some commenters believe that PHMSA failed to justify its request for the quantity of hazardous materials or operations expected to be conducted under a special permit. Other commenters expressed concern that estimating the quantity of hazardous materials to be shipped under a special permit will be too difficult to provide a reasonable estimate. We disagree. For clarification, we expect applicants to provide an estimate of the number of shipments based on the best available knowledge, and are adopting this requirement as proposed.

In paragraph (c)(11) PHMSA proposed to require an estimate of the number of packagings expected to be manufactured under the special permit. PHMSA received comments on this proposal from IME and COSTHA. IME states that it did not object to quantifying the number of packages manufactured under a special permit, but acknowledged that it would be an estimate. COSTHA states that there would be very little value in PHMSA knowing the number of packages manufactured under a special permit, and a true estimate would be very difficult to determine. As previously stated, PHMSA expects applicants to provide an estimate of the number of shipments based on the best available knowledge at the time the application is submitted. Therefore, PHMSA is adopting this requirement as proposed.

In paragraph (c)(12) PHMSA proposed to require a statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action. PHMSA received comments from IME, COSTHA, and the American Coatings Association objecting to this requirement. IME states that it is unclear how PHMSA is going to use this information. COSTHA indicates a belief that false allegations against a company could preclude it from obtaining a special permit. PHMSA believes it is relevant whether the applicant is applying for the special permit in response to a compliance review, inspection activity or enforcement action, and that this information will assist us in the determination of the fitness of an applicant and will help us to ensure that compliance data pertaining to an applicant is accurate. Therefore, we are adopting this requirement as proposed.

In paragraph (d)(3)(i), PHMSA proposed to add the phrase "failure mode and effect analysis (FMEA)" as an example of documentation that is acceptable to substantiate that the proposed alternative sought in the special permit application will achieve a level of safety that is at least equal to that required by the regulation from which the applicant is requesting relief. PHMSA received comments from COSTHA, Northern Air Cargo, Association of HAZMAT Shippers, American Coatings Association, DGAC, ATA and Stericycle Inc. expressing concerns about the requirement to conduct a FMEA. For clarification, we stress that we are not requiring applicants to conduct a FMEA. Rather, our intention is to require that applicants substantiate the required level of safety by using a risk assessment, with applicable analyses, data or test results. We provided a FMEA as an example of a tool that can be used in order to demonstrate such an equivalent level of safety, but emphasize that it is not to be construed as a requirement. In addition, as discussed in the NPRM, we believe it is essential to understand and analyze the risks of a special permit application, and the analysis should include potential failure modes and consequences. For example, a special permit application that includes Part 178 requirements for design and manufacturing of DOT specification cylinders should include an analysis that addresses potential failure of a cylinder due to excessive hoop stress, fatigue, and corrosion. We believe the applicant requesting a special permit is the most suitable party to perform a "failure mode and effect analysis (FMEA)" or other risk assessment that identifies the associated risks and ways to control the risk for a requested special permit. Therefore, PHMSA is incorporating this requirement as proposed.

Section 107.107

In § 107.107, PHMSA proposed to revise the requirements for submitting an application for party status to an application or an existing special permit. In paragraph (a), PHMSA proposed to editorially revise the sentence "Any person eligible to apply

for a special permit may apply to be made a party" by removing the word "made."

In paragraph (b)(3), PHMSA proposed to require applicants to submit the same information that would be required from an applicant for a special permit, including the physical address(es) of all known locations where the special permit would be used, a point of contact, the name of the company president or CEO, and DUNS identifier. For clarification, we editorially revised the language in paragraph (b)(4) to specify that if the applicant is not a resident of the United States, the applicant must identify and designate an agent for service in accordance with § 105.40. PHMSA also proposed to add a new (b)(6) to require a certification that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant would follow renewal procedures as specified in § 107.109. PHMSA received comments from PPG Industries, American Coatings Association, and Stericycle Inc. repeating the previous concerns from the comments to the proposed requirements for § 107.105 regarding the requirement to provide the CEO name and DUNS number. Stericycle Inc. expresses concern that revealing a list of all known locations where a special permit will be used would require them to reveal proprietary information. We note that the HMR already has procedures in § 105.30(a) for applicants who wish to protect proprietary information. Under this section, information is submitted to PHMSA with "confidential" written on each page along with an explanation on why the information should remain confidential. PHMSA then notifies the applicant on whether or not its information will be treated as confidential. PHMSA believes that requiring this information is essential to ensuring that an applicant is fit to conduct business under the guidelines of a special permit and is adopting this requirement as proposed.

Section 107.109

Section 107.109 of the HMR specifies the requirements for submitting an application for renewal of a special permit or party status to a special permit. In paragraph (a)(3), PHMSA proposed to require the applicant to submit the same information that would be required from an applicant for the special permit including the applicant's physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, a point of contact, the name of the company president or CEO and a DUNS identifier. PHMSA received comments from DGAC, Norris Cylinder, American Coatings Association, and Stericycle Inc. again questioning the proposed requirement that applicants report all known locations where a special permit would be used. Commenters note this proposed revision would require some applicants to list hundreds, or perhaps thousands, of locations where the special permit will be used. We addressed similar comments pertaining to this issue in the discussion found under § 107.105. However, we reiterate the importance for applicants to list to the best of their knowledge all known locations using the best available information when applying for a special permit. Therefore, PHMSA is incorporating this requirement as proposed.

In paragraph (a)(4), for clarification, PHMSA provides examples of supporting documentation that may require updating when an application for renewal of the special permit is submitted. PHMSA did not receive any comments opposing this requirement. Therefore, in this final rule, we are adopting this requirement as proposed.

In paragraph (a)(5), PHMSA proposed to add the term "operational experience" to the current requirement that a statement be included in the application describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. The American Coatings Association objects to this proposal stating that the current application process already captures information on incidents, and the additional information requirement would create a burden. PHMSA believes it is imperative for the applicant to provide information about operational controls in order to better assess that such operational controls are in place and are being adhered to as we make a determination whether the applicant can provide an equivalent level of safety. Therefore, in this final rule, we are incorporating this revision as proposed.

In the NPRM, PHMSA proposed to add new paragraphs (a)(7) and (a)(8) to this section. In paragraph (a)(7), PHMSA proposed to require the applicant to submit additional information for a renewal that is requested after the expiration date of the special permit. Specifically, we proposed to require: (1) The reason the special permit authorization was allowed to expire; (2) a certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and (3) a statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date. DGAC objects to the proposed requirement stating its belief that such information violates the Paperwork Reduction Act (PRA). We disagree. PHMSA carefully reviewed this proposed requirement and determined that such a scenario would likely be an infrequent occurrence and, therefore, would require a minimal amount of time to add the required statements when it does occur. In addition, we adjusted the information collection burden to account for such an occasion and included it in the calculations when a revised information collection was submitted to the Office of Management and Budget (OMB). Therefore, in this final rule, PHMSA is adopting this requirement as proposed.

In paragraph (a)(8), PHMSA proposed to require applicants to provide a specific justification why the special permit should be renewed if no operations or shipments have been made since the issuance or renewal of the special permit. DGAC and Northern Air cargo objected to including this requirement, with DGAC claiming that the requirement was an unnecessary information collection under the PRA. As previously stated, PHMSA reviewed this proposed requirement for PRA implications and determined that such a scenario would also be an infrequent occurrence and would require a minimal amount of time on the part of the applicant when it does occur. Accordingly, we adjusted the information collection burden to account for such an occurrence when a revised information collection was submitted to OMB. Therefore, in this final rule, PHMSA is adopting this requirement as proposed.

Sections 107.109; 107.113; 107.117; 107.121; 107.123; 107.125; and 171.8

In the NPRM, PHMSA proposed to revise certain sections in Part 107—"Hazardous Materials Program Procedures" to authorize the use of "electronic service" or "electronic means" to provide greater flexibility in the procedures for the issuance, modification, and termination of special permits. The affected sections are as follows:

§ 107.113 Application processing and evaluation.

§ 107.121 Modification, suspension or termination of special permit or grant of party status.
§ 107.123 Reconsideration.
§ 107.125 Appeal.

Section 107.113 specifies the requirements for the application and processing of: (1) An application for a special permit; (2) modification of a special permit, (3) party to a special permit, and (4) renewal of a special permit. In the NPRM, PHMSA proposed to require that, during the processing and evaluation of an application, the Associate Administrator may request additional information from the applicant, including during an on-site review. To enable the agency to better evaluate the applicant's fitness and the safety impact of operations that would be authorized under the special permit, we are also specifying that a failure on the part of the applicant to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. PHMSA received comments from IME and the American Coatings Association expressing concerns about this proposed requirement. IME thinks that the requirement is unclear. The American Coatings Association notes that this requirement is a new element in the application process that has not been submitted for notice and comment under the Administrative Procedure Act (APA). PHMSA disagrees that this process is a violation of the APA because it solicited comment on the provision in the NPRM, as required by the APA, and because it already retains the authority to conduct inspections under § 107 during the special permit application process. This requirement is being included under this section to increase applicant's awareness of the ability of PHMSA to conduct inspections specified under § 107. PHMSA did not receive any additional comments opposing this requirement, and is adopting this requirement as proposed.

Section 107.117 specifies the requirements for submitting an application for emergency processing. In paragraph (d)(5), PHMSA is updating the telephone number for the Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC for an application for water transportation as the initial mode of transport submitted on an emergency basis. PHMSA did not receive any comments opposing this requirement and is adopting this requirement as proposed.

PHMSA also proposed to remove the word "exemption(s)" from various sections in Part 107 and from the definition of a "special permit" in § 171.8, Definitions and Abbreviation. These amendments are necessary because use of the term "exemption(s)" has been replaced with "special permit(s)" following the publication of a final rule entitled "Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations," published on December 9, 2005 (70 FR 73156) under Docket No. PHMSA–2005–22208 (HM–240). The December 9, 2005 final rule changed the term "exemption" to "special permit." COSTHA objects to the removal of the word "exemptions" from the regulations because the term is still used in international regulation and could cause confusion. PHSMA disagrees with this comment and believes that removing the word "exemption" from the HMR is needed to keep terminology consistent within the HMR. Therefore PHMSA is incorporating this revision as proposed.

The affected sections are as follows:

§ 107.109
§ 107.113
§ 107.121
§ 107.123
§ 171.8

VI. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal hazardous materials transportation law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The final rule amends the regulations to revise the special permit application requirements and provide an on-line capability for applications.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). In this final rule, PHMSA is revising the special permits application procedures by requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. PHMSA recognizes there may be additional costs related to the proposals to require additional information in the special permits application procedures. However, we believe these costs are minimized by the proposals to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing paperwork burden on applicants and administrative costs for the agency.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would preempt State, local and Indian Tribe requirements but does not contain any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local and Indian Tribe requirements on certain covered subjects.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have Tribal implications and does not impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. This final rule proposes revisions to current special permit application requirements that may increase the time that would be required to complete such an application. Although many of the applicants may be small businesses or other small entities, PHMSA believes that the addition of an on-line application option will significantly reduce the burden imposed by the application requirements. Therefore, PHMSA certifies that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American Tribal governments, or the private sector.

G. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements." This final rule may result in a slight increase in the annual burden and costs under this information collection due to proposed changes to require an applicant to provide additional information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. Much of this increased burden will be minimized because of changes to allow for electronic means for all special permits and approvals actions, and to authorize electronic means as an alternative to written means of communication.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. PHMSA developed burden estimates to reflect changes in this final rule and submitted a revised information collection request to OMB for approval based on the requirements in this final rule. PHMSA estimates that the additional information collection and recordkeeping burden in this rule will be as follows:

OMB Control No. 2137–0051:

Affected Number of Annual Respondents: 3,500.

Affected Number of Annual Responses: 3,500.

Net Increase in Annual Burden Hours: 865.

Net Increase in Annual Burden Costs: $34,600.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Standards and Rulemaking Division (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. Given that this rulemaking requires additional, more detailed information from applicants and strengthen agency oversight, this change in regulation will increase safety and environmental protections. There are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR part 105, 49 CFR part 107, and 49 CFR part 171 are amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 105.35, paragraph (a)(4) is added to read as follows:

§ 105.35 Serving documents in PHMSA proceedings.

(a) * * *

* * * * *

(4) Electronic service.

(i) Service by electronic means if consented to in writing by the party to be served.

(ii) For all special permits and approvals actions, electronic service is authorized.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.1, the definition for "special permit" is revised to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (*e.g.,* Federal Motor Carrier Safety routing requirements).

* * * * *

■ 5. Section 107.105 is revised to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a

special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested effective date and conform to the following requirements:

(1) The application, including a table of contents, must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted electronically by e-mail to: *Specialpermits@dot.gov* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with § 105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer ("M" number), if applicable.

(5) For persons required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant must comply with § 105.30(a).

(c) *Description of special permit proposal.* The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required;

(3) A detailed description of the proposed special permit (*e.g.,* alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons;

(7) Identification and description, including an estimated quantity of each shipment of the hazardous materials planned for transportation under the special permit or;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action; and

(13) When a Class 1 material is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(d) *Justification of special permit proposal.* The application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application; and

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (*e.g.,* failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

■ 6. Section 107.107 is revised to read as follows:

§ 107.107 Application for party status.

(a) Any person eligible to apply for a special permit may apply to be a party to an application or an existing special permit, other than a manufacturing special permit.

(b) Each application filed under this section must conform to the following requirements:—

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronically by e-mail to: *Specialpermits@dot.gov,* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with § 105.40 of part.

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), a certification from an applicant for party status to a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit renewal procedures set forth in § 107.109 apply.

■ 7. Section 107.109 is revised to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted electronically by e-mail to: *Specialpermits@dot.gov;* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (*e.g.,* all section references, shipping descriptions, *etc.*) and complete; or include an amendment to the previously submitted application as is necessary to update and ensure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:

(i) The reason the special permit authorization was allowed to expire;

(ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(8) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(b) If, at least 60 days before an existing special permit expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final

administrative action on the application for renewal has been taken.

■ 8. In § 107.113, paragraphs (a), (d), (f)(5), (g), and (h) are revised to read as follows:

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for a special permit, modification of a special permit, party to a special permit, or renewal of a special permit to determine if it is complete and conforms with the requirements of this subpart. This determination will be made within 30 days of receipt of the application for a special permit, modification of a special permit, or party to a special permit, and within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the applicant is informed of the deficiency.

* * * * *

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

* * * * *

(f) * * *

(5) The applicant is fit to conduct the activity authorized by the special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

* * * * *

(g) An applicant is notified in writing or by electronic means whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) The initial special permit terminates according to its terms or, if not otherwise specified, 24 months from the date of issuance. A subsequent renewal of a special permit terminates according to its terms or, if not otherwise specified, 48 months after the date of issuance. A grant of party status to a special permit, unless otherwise stated, terminates on the date that the special permit expires.

* * * * *

■ 9. In § 107.117, paragraph (d)(5) is revised to read as follows:

§ 107.117 Emergency processing.

* * * * *

(d) * * *

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593–0001; 202–372–1420 (day); 1–800–424–8802 (night).

* * * * *

■ 10. Section 107.121 is revised to read as follows:

§ 107.121 Modification, suspension or termination of special permit or grant of party status.

(a) The Associate Administrator may modify a special permit or grant of party status on finding that:

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of § 107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

(c) Except as provided in paragraph (d) of this section, before a special permit or grant of party status is modified, suspended, or terminated, the Associate Administrator notifies the holder or party in writing or by electronic means of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause why the proposed action should not be taken.

(2) After considering the holder's or party's response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing or by electronic means of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may, in the notification, declare the proposed action immediately effective.

■ 11. Section 107.123 is revised to read as follows:

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing or by electronic means of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

■ 12. In § 107.125, paragraphs (a)(1) and (c) are revised to read as follows:

§ 107.125 Appeal.

(a) * * *

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration; (2) state in detail any alleged errors of fact and law;

* * * * *

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator's decision is the final administrative action.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 13. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 14. In § 171.8, the definition for "Special permit" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (*e.g.,* Federal Motor Carrier Safety routing requirements).

* * * * *

Issued in Washington, DC, on December 29, 2010 under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2010–33316 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–XA125

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Final rule; notification of U.S. fish quotas.

SUMMARY: NMFS announces that fish quotas are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: Effective January 1, 2011, through December 31, 2011. Expressions of interest regarding U.S. fish quota allocations for all species except Division 3L shrimp and Division 3M redfish will be accepted throughout 2011. Expressions of interest regarding the U.S. 3L shrimp and 3M redfish quota allocations and the 3LNO yellowtail flounder to be transferred by Canada will be accepted through January 20, 2011.

ADDRESSES: Expressions of interest regarding U.S. quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of International Affairs, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *Pat.Moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Allison McHale, at the NMFS Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978–281–9103, fax: 978–281–9135, e-mail: *allison.mchale@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.int.*

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, hake, capelin, shrimp, skates and squid. At the 2010 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks to be fished during 2011. Please note that NAFO has eliminated the Division 3M shrimp effort allocation for 2011 due to conservation concerns. Fishing opportunities for this stock will be re-opened when the NAFO Scientific Council advice estimates that the stock is showing signs of recovery.

The species, location, and allocation (in metric tons) of 2011 U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2011 NAFO Conservation and Enforcement Measures, are as follows:

(1) Redfish	NAFO Division 3M.	69 mt.
(2) Squid (*Illex*)	NAFO Subareas 3 & 4.	453 mt.
(3) Shrimp	NAFO Division 3L.	334 mt.

Additionally, the United States may be transferred up to 1,000 mt of 3LNO yellowtail flounder from Canada's quota allocation for express use by U.S. vessels if the United States requests a transfer before January 1 of 2011, or any succeeding year through 2017. If such a request is made, an additional 500 mt of 3LNO yellowtail flounder could be made available on the condition that the United States transfers its 3L shrimp allocation to Canada or through some other arrangement. Participants in this fishery will be restricted to an overall bycatch harvest limit for American plaice equal to 15% of the total yellowtail fishery.

Further, U.S. vessels may be authorized to fish any available portion of the 385 mt allocation of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K available to NAFO members that are not also members of the Northeast Atlantic Fisheries Commission. Fishing opportunities may also be authorized for U.S. fishermen in the "Others" category for: Division 3LNO yellowtail flounder (85 mt); Division 3NO white hake (353 mt); Division 3LNO skates (444 mt); Division 3M cod (40 mt), 3LN redfish (35 mt) and Division 3O redfish (100 mt). Procedures for obtaining NMFS authorization are specified below.

U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the 2011 U.S. fish quota allocations, including the up to 1,500 mt of yellowtail flounder to be transferred by Canada under the circumstances described above, and "Others" category allocations in NAFO will be considered from U.S. vessels in possession of, or eligible for, a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (*see* **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (*see* **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing

multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in 50 CFR 648.23(b); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (*see* **ADDRESSES**).

Transfer and Chartering of U.S. Quota Allocations

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2011 NAFO Division 3M redfish quota allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties through a transfer of quota allocated to the United States. Under NAFO rules in effect for 2011, the United States may transfer fishing possibilities with the consent of the receiving Contracting Party and with prior notification to the NAFO Executive Secretary. Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party through a transfer of quota allocated to the United States should include a letter of consent from the vessel's flag state. In addition, expressions of interest for transfers should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the recipient NAFO Contracting Party actually would take place; and any available documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2011 NAFO Division 3L shrimp quota allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2011 U.S. quota allocation for 3L shrimp. Under NAFO rules in effect through 2011, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. shrimp quota provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention; and notification to NMFS of the termination of the charter fishing activities. Furthermore, the United States may also consider a Contracting Party's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed six months). More details on NAFO requirements for chartering operations are available from NMFS (*see* **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the transfer of Division 3L redfish quota allocated to the United States, or chartering operations to fish Division 3L shrimp quota allocated to the United States, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing transfer or the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded, NMFS will immediately take appropriate steps to notify NAFO to take appropriate action .

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded. Please note that if the U.S. portion of any 2011 NAFO quota allocation, or the 3LNO yellowtail flounder transferred from Canada is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: December 30, 2010.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2010–33312 Filed 1–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA121

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2011 Bering Sea Pollock Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2011 total allowable catch (TAC) amount for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the Bering Sea pollock TAC is the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2011, until the effective date of the final 2011 and 2012 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2011.

ADDRESSES: Send comments to James W. Balsiger, Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA121, by any one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 pollock TAC in the Bering Sea subarea was set at 1,110,000 metric tons (mt) by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In December 2010, the Council recommended a 2011 pollock TAC of 1,252,000 mt for the Bering Sea subarea. This amount is more than the 1,110,000 mt established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2010, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(5)(i)(B) apportion the pollock TAC allocated to the Bering Sea directed pollock fisheries seasonally to distribute catch over time because pollock is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2010 SAFE report for this fishery, the current Bering Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2011 pollock TAC to 1,252,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), as adjusted by a reallocation of a portion of the 2010 incidental catch allowance (75 FR 54792, September 9, 2010), is revised for the 2011 pollock TACs consistent with this adjustment.

TABLE 3—FINAL 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2010 Allocations	2010 A season [1]		2010 B season [1]	2011 Allocations	2011 A season [1]		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	813,000	n/a	n/a	n/a	1,252,000	n/a	n/a	n/a
CDQ DFA	81,300	32,520	22,764	48,780	125,200	50,080	35,056	75,120
ICA [1]	24,768	n/a	n/a	n/a	33,804	n/a	n/a	n/a
AFA Inshore	353,466	140,486	98,340	212,980	546,498	218,599	153,019	327,899
AFA Catcher/Processors [3]	282,773	112,389	78,672	170,384	437,198	174,879	122,416	262,319
Catch by C/Ps	258,737	102,836	n/a	155,901	400,037	160,015	n/a	240,022
Catch by CVs [3]	24,036	9,553	n/a	14,483	37,162	14,865	n/a	22,297

TABLE 3—FINAL 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2010 Allocations	2010 A season [1]		2010 B season [1]	2011 Allocations	2011 A season [1]		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Unlisted C/P Limit [4] ..	1,414	562	n/a	852	2,186	874	n/a	1,312
AFA Motherships	70,693	28,097	19,668	42,596	109,300	43,720	30,604	65,580
Excessive Harvesting Limit [5]	123,714	n/a	n/a	n/a	191,274	n/a	n/a	n/a
Excessive Processing Limit [6]	212,080	n/a	n/a	n/a	327,899	n/a	n/a	n/a
Total Bering Sea DFA	706,932	280,973	196,681	425,959	1,092,996	437,198	306,039	655,798
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	50	n/a	n/a	n/a	150	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require the Bering Sea pollock harvests to be lower than the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 15, 2010, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2011.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 29, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–33303 Filed 12–30–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA120

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2011 Bering Sea and Aleutian Islands Pacific Cod Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2011 total allowable catch (TAC) amount for the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery. This action is necessary because NMFS has

determined this TAC is incorrectly specified. This action will ensure the BSAI Pacific cod TAC is the appropriate amount, based on the best available scientific information for Pacific cod in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2011, until the effective date of the final 2011 and 2012 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2011.

ADDRESSES: Send comments to James W. Balsiger, Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA120, by any one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 Pacific cod TAC in the BSAI was set at 207,580 metric tons (mt) by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In December 2010, the Council recommended a 2011 Pacific cod TAC of 227,950 mt for the BSAI. This amount is more than the 207,580 mt established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2010, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(7)(i)(B) apportion the Pacific cod TAC allocated to the Bering Sea directed Pacific cod fisheries seasonally to distribute catch over time because Pacific cod is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2010 SAFE report for this fishery, the current BSAI Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2011 Pacific cod TAC to 227,950 mt in the BSAI.

Pursuant to § 679.20(a)(7), Table 5b of the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) is revised for the 2011 Pacific cod TAC consistent with this adjustment.

TABLE 5b—FINAL 2011 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment	
				Dates	Amount
Total TAC	100	227,950	n/a	n/a	n/a
CDQ	10.7	24,391	n/a	see § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	123,764	n/a	n/a	n/a
Hook-and-line/pot ICA [1]	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	123,264	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	98,733	Jan 1–Jun 10	50,354
				Jun 10–Dec 31	48,379
Hook-and-line catcher vessel ≥ 60 ft LOA.	0.2	n/a	405	Jan 1–Jun 10	207
				Jun 10–Dec 31	199
Pot catcher/processor	1.5	n/a	3,041	Jan 1–Jun 10	1,551
				Sept 1–Dec 31	1,490
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	17,030	Jan 1–Jun 10	8,685
				Sept 1–Dec 31	8,345
Catcher vessel < 60 ft LOA using hook-and-line or pot gear.	2	n/a	4,055	n/a	n/a
Trawl catcher vessel	22.1	44,987	n/a	Jan 20–Apr 1	33,290
				Apr 1–Jun 10	4,949
				Jun 10–Nov 1	6,748
AFA trawl catcher/processor	2.3	4,682	n/a	Jan 20–Apr 1	3,511
				Apr 1–Jun 10	1,170
				Jun 10–Nov 1	0

TABLE 5B—FINAL 2011 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment	
				Dates	Amount
Amendment 80	13.4	27,277	n/a	Jan 20–Apr 1	20,458
				Apr 1–Jun 10	6,819
				Jun 10–Nov 1	0
Alaska Groundfish Cooperative [2]	n/a	n/a	5,079	Jan 20–Apr 1	3,809
				Apr 1–Jun 10	1,270
				Jun 10–Nov 1	0
Alaska Seafood Cooperative [2]	n/a		22,198	Jan 20–Apr 1	16,649
				Apr 1–Jun 10	5,550
				Jun 10–Nov 1	0
Jig	1.4	2,850	n/a	Jan 1–Apr 30	1,710
				Apr 30–Aug 31	570
				Aug 31–Dec 31	570

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2011 based on anticipated incidental catch in these fisheries.

[2] Two Amendment 80 cooperatives have formed for 2011, rather than a single cooperative. The Alaska Groundfish Cooperative category replaces a category designated as "Amendment 80 limited access." Table 5b is updated to reflect this change.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require harvests lower than the appropriate allocations for Pacific cod, based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 15, 2010, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2011.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 29, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–33306 Filed 12–30–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA119

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2011 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2011 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2011, until the effective date of the final 2011 and 2012 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2011.

ADDRESSES: Send comments to James W. Balsiger, Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA119, by any one of the following methods:

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

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in

Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2010 and 2011 harvest specifications for groundfish in the GOA (75 FR 11749, March 12, 2010) set the 2011 pollock TAC at 109,105 metric tons (mt) and the 2011 Pacific cod TAC at 73,719 mt in the GOA. In December 2010, the Council recommended a 2011 pollock TAC of 96,215 mt for the GOA, which is less than the 109,105 mt established by the final 2010 and 2011 GOA harvest specifications. The Council also recommended a 2011 Pacific cod TAC of 65,100 mt for the GOA, which is less than the 73,719 mt established by the final 2010 and 2011 harvest specifications for groundfish in the GOA. The Council's recommended 2011 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2010, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2010 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2011 GOA pollock TAC to 96,215 mt and the 2011 GOA Pacific cod TAC to 65,100 mt.

Pursuant to § 679.20(a)(5)(iv), Table 6 of the final 2010 and 2011 harvest specifications for groundfish in the GOA (75 FR 11749, March 12, 2010) is revised for the 2011 pollock TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 6—FINAL 2011 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; PERCENTAGE SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

Season	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [1]
A (Jan 20–Mar 10)	4,786	22.62%	11,895	56.22%	4,475	21.15%	21,159
B (Mar 10–May 31)	4,786	22.62%	14,231	67.26%	2,139	10.11%	21,158
C (Aug 25–Oct 1)	8,729	41.25%	5,619	26.55%	6,812	32.19%	21,158
D (Oct 1–Nov 1)	8,729	41.25%	5,619	26.55%	6,812	32.19%	21,158
Annual Total	27,030		37,364		20,237		84,631

[1] The West Yakutat and Southeast Outside District pollock TACs (2,339 and 9,245, respectively) are not allocated by season and are not included in the total pollock TACs shown in this table.

Note: As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 8 of the final 2010 and 2011 harvest specifications for groundfish in the GOA (75 FR 11749, March 12, 2010) is revised for the 2011 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 8—FINAL 2011 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area	Season	TAC	Component allocation [1]	
			Inshore (90%)	Offshore (10%)
Western	Annual	22,785	20,506	2,279
	A season (60%)	13,671	12,303	1,367
	B season (40%)	9,114	8,202	911
Central	Annual	40,362	36,326	4,036
	A season (60%)	24,217	21,795	2,422
	B season (40%)	16,145	14,530	1,614
Eastern	Annual	1,953	1,758	195
	Total	65,100	58,590	6,510

[1] Seasonal apportionments may not total precisely due to due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 15, 2010, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2011.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 29, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–33308 Filed 12–30–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 3
Wednesday, January 5, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2010–1193; Notice No. 10–19]

RIN 2120–AJ80

Harmonization of Airworthiness Standards for Transport Category Airplanes—Landing Gear Retracting Mechanisms and Pilot Compartment View

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes on landing gear retracting mechanisms and the pilot compartment view. This proposal would adopt the 1-g stall speed as a reference stall speed instead of the minimum speed obtained in a stalling maneuver, and would add an additional requirement to keep the landing gear and doors in the correct retracted position in flight. This proposal would also revise the requirements for pilot compartment view in precipitation conditions. Adopting these proposals would eliminate regulatory differences between the airworthiness standards of the U.S. and the European Aviation Safety Agency (EASA), without affecting current industry design practices.

DATES: Send your comments on or before April 5, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1193 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Douglas Tsuji, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2135; facsimile (425) 227–1320, e-mail *Douglas.Tsuji@faa.gov*.

For legal questions concerning this proposed rule contact Doug Anderson, Office of the Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *Douglas.Anderson@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

Background

Part 25 of Title 14, Code of Federal Regulations (14 CFR) prescribes airworthiness standards for type certification of transport category airplanes for products certified in the United States. The European Aviation Safety Agency (EASA) Certification Specifications for Large Aeroplanes (CS–25) prescribe the corresponding airworthiness standards for products certified in Europe. While part 25 and CS–25 are similar, they differ in several respects. Therefore, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) through the Mechanical Systems Harmonization Working Group (MSHWG) to review existing regulations and recommend changes that would eliminate differences between the FAA and EASA airworthiness standards for landing gear retracting mechanisms and the pilot compartment view. This proposed rule is a result of this harmonization effort.

General Discussion of the Proposal

The FAA agrees with the ARAC recommendation to harmonize airworthiness standards for landing gear retracting mechanisms and the pilot compartment view with the corresponding EASA specifications, and we propose to amend part 25 accordingly. The proposals are not expected to be controversial and should reduce certification costs to industry without adversely affecting safety. In developing these proposals, ARAC and the FAA considered the following factors:

a. Underlying safety issues addressed by current standards;

b. Differences between part 25 and CS–25 standards;

c. Differences between part 25 and CS–25 means of compliance;

e. Effect of the proposed standard on current industry practice;

f. Whether FAA advisory material exists and/or needs amendment; and

g. The costs and benefits of each proposal.

The complete analyses for the proposed changes made in response to ARAC recommendations can be found in the ARAC recommendation reports, located in the docket for this rulemaking.

Discussion of the Proposed Regulatory Requirements

Proposed Changes to § 25.729, Retracting Mechanism

1. Amendment 25–108 (67 FR 70811, November 26, 2002) to 14 CFR redefined the reference stall speed, V_{SR}, for transport category airplanes, as the 1-g stall speed, instead of the minimum speed obtained in a stalling maneuver. This provides a higher level of safety in cases where current methods of determining stall speed may result in lower operating speeds. This change was established to provide a consistent, repeatable reference stall speed; ensure consistent and dependable maneuvering margins; to provide for adjusted multiplying factors to maintain the current stalling speeds where they are proven adequate; and to harmonize the applicable regulations with those adopted in EASA CS–25.

Under Amendment 25–108, several sections of part 25 were revised to adopt V_{SR}. However, that change was inadvertently omitted from 14 CFR 25.729(a)(1)(ii). This proposed rule would update § 25.729(a)(1)(ii) with the new reference stall speed, V_{SR}, and harmonize it with the more stringent EASA standard. CS 25.729(a)(1)(ii) refers to wheel rotation at a peripheral speed equal to 1.23 V_{SR} (with the flaps in takeoff position at design takeoff weight), occurring during retraction and extension at any airspeed up to 1.5 V_{SR1} with the wing-flaps in the approach position at design landing weight. Whereas, § 25.729(a)(1)(ii) currently uses a peripheral speed equal to 1.3 V_S during retraction and extension at any airspeed up to 1.6 V_{S1}, respectively. The difference in these factors (1.23 versus 1.3, and 1.5 versus 1.6) adjusts for the difference between the speeds used (V_{SR} versus V_S, and V_{SR1} versus V_{S1}). In some cases, these factors make this proposed rule slightly more conservative than the existing rule.

2. For clarification and harmonization with the EASA terminology used in CS 25.729(a)(1)(iii), this proposed rule would add the word "wing" to "flaps" in § 25.729(a)(1)(iii).

3. For clarification and harmonization with the EASA terminology used in CS 25.729(a)(3), this proposed rule would replace the word "prescribed" with "presented."

4. Section 25.729(b) does not currently require a positive means to keep the landing gear and doors in the correct retracted position in flight for any condition. The EASA standard requires each retractable landing gear and separately actuated door to have a positive uplock, or be able to extend or open into the air stream at any flight speed without causing a hazard. Compliance would be demonstrated by system description or stress analysis. This proposed rule would add that requirement to § 25.729(b) to harmonize with the more stringent EASA standard.

5. Section 25.729(e) requires a landing gear position indicator for retractable gear and provides design requirements for the indicator and warning system. CS 25.729(e) has additional design requirements that § 25.729(e) does not have. The EASA standard requires that each indicator be easily visible to the pilot or appropriate crewmembers and not be ambiguous regarding landing gear position. The EASA standard also requires the indicator to show the associated landing gear door position. This proposed rule would add these requirements to § 25.729(e) to harmonize with the more stringent EASA standard.

6. Section 25.729(e)(5) currently requires that the aural warning system be designed to "eliminate" false or inappropriate alerts, while CS 25.729(e)(5) requires that they be "minimized." If taken literally, § 25.729(e)(5) is too stringent. While elimination of nuisance warnings is a worthy goal, it is impossible to eliminate all nuisance warnings. A requirement to "minimize" false or inappropriate alerts is a more subjective but attainable standard, and moreover embraces any improvements in warning system technology. The preamble to the final rule amending § 25.729, states "* * * the regulations on landing gear aural warning are being revised to state the performance objectives without stating how the requirements should be implemented (56 FR 63762, December 5, 1991). This allows the manufacturers to use their ingenuity in designing systems to minimize nuisance warnings." Therefore, the intent of the requirement has always been to minimize false or inappropriate alerts. Compliance with § 25.729(e)(5) is currently demonstrated by failure mode and effects analysis with an understanding that "eliminate" means "very low probability." This proposed rule would update § 25.729(e)(5) to reflect our original intent and to harmonize with the less stringent EASA standard.

7. Section 25.729(e) does not currently require an indication whenever the landing gear position does not agree with the selector lever position. However, such an indication is consistent with prudent design of landing gear indication. CS 25.729(e)(7) requires an indicator for this situation. Compliance is demonstrated by the landing gear system description and the failure modes and effects analysis (FMEA). This proposed rule would add a new paragraph (e)(7) containing this requirement, which would harmonize § 25.729(e) with the more stringent EASA standard.

8. Although § 25.729(f) requires protection of equipment in wheel wells from the damaging effects of a bursting tire or loose tire tread, it does not currently require the protection of equipment on the landing gear. Since equipment on the lower part of the landing gear is always near the tire, such equipment should be protected. CS 25.729(f) requires protection of equipment "* * * located on the landing gear and in the wheel wells * * *." This proposed rule would harmonize § 25.729(f) with the more stringent EASA standard by requiring protection of equipment "* * * located on the landing gear or in the wheel wells * * *." Note that we have used the word "or" instead of "and" to clarify that the proposed rule would apply to equipment located in either location.

Essential equipment on the landing gear could include any sensors such as "weight on wheels" sensors that, if damaged or destroyed by a tire burst, could have an effect on the safe operation of the airplane. An example is the Global Express Learjet that overran the runway during a rejected takeoff. The tire burst damaged the weight on

wheel sensors, so when the pilot rejected the takeoff and retarded the thrust, the thrust reversers remained stowed.

9. Section 25.729(f)(1) contains a condition that excludes consideration of bursting tires if it can be shown that the tires cannot burst from overheat. CS 25.729(f)(1) does not contain this exception, and EASA's interpretative material in Acceptable Means of Compliance (AMC) 25.729 does not allow the use of wheel fuse plugs as a complete safeguard against tire burst damage. Instead, it requires additional means of compliance, such as separation analysis, robust design, or test. This proposed rule would harmonize § 25.729(f)(1) with the more stringent EASA standard.

10. Section 25.729 does not currently require protection of equipment in wheel wells from possible wheel brake temperatures. However, CS 25.729(f)(3) contains this requirement, and the interpretative material in AMC 25.729 suggests that the pilot should be provided an indication of brake temperature. This requirement results in an analysis of equipment that could be exposed to heat from the brake or installation of a brake heat indication system. Additional safety and cost factors to consider are the location of essential equipment away from possible brake heat, and the installation of an additional heat indication system that has its own failure mode and maintenance issues. Compliance is demonstrated by separation analysis, thermal analysis, or, as suggested in AMC 25.729, a brake temperature indication system. This proposed rule would add a new paragraph (f)(3) containing the requirement to protect equipment from the damaging effects of possible wheel brake temperatures, which would harmonize § 25.729(f) with the more stringent EASA standard.

Advisory Material for § 25.729

Current FAA advisory material addresses only flight testing for compliance with the existing rule. To address the proposed requirements for § 25.729, the FAA proposes to incorporate the interpretative material found in EASA AMC 25.729 into new advisory circular (AC) 25.729–1A. The draft AC accompanies this proposed rule and is posted on the FAA's draft document Web site at *http://www.faa.gov/aircraft/draft_docs/* for public comment.

Proposed Changes to § 25.773, Pilot Compartment View

1. Section 25.773(b) contains requirements for clear pilot view along the flight path during precipitation conditions, but does not address single failures of rain removal systems that can cause the loss of the pilot view through both windshields, which paragraph (b)(1) requires. Currently, compliance with part 25 can be demonstrated with only one wiper switch to control both the left and right wipers, but the EASA standard specifically requires provisions to preclude a single fault from causing the potential failure of both systems. As a result, system design is driven to have separate left and right wiper switches in addition to separate motors. In this case, the more stringent EASA standard provides for increased system reliability and an increased level of safety. This proposed rule would add this requirement to § 25.773(b)(2). This proposed rule would also move the existing requirements of § 25.773(b)(2) and (b)(2)(i) to new § 25.773(b)(3) and (b)(3)(i) through (b)(3)(iii), respectively. These proposed changes would harmonize § 25.773(b)(2) and (b)(3) with the EASA standard.

2. Section 25.773(b)(2)(ii) refers only to severe hail, while the corresponding CS 25.773(b)(4)(ii) refers to severe hail, birds, and insects. This proposed rule would remove § 25.773(b)(2)(ii) and add new § 25.773(b)(4)(ii), which would harmonize it with the EASA standard.

3. Section 25.773(b) does not currently allow for an alternative to the openable side window required by § 25.773(b)(2)(i). (Section 25.773(b)(2)(i) currently corresponds to CS 25.773(b)(3)(i).) However, CS 25.773(b)(4) does allow for an alternative to the openable side window. CS 25.773(b)(4) could be interpreted to be redundant with existing § 25.773(b)(2)(ii), but the EASA standard provides more detail. CS 25.773(b)(4) contains two subparagraphs:

- Paragraph (b)(4)(i) allows relief for the openable side window if it can be demonstrated that sufficient pilot view is still provided in the event of failure—or combination of failures—of the rain removal system, where the failure(s) is not extremely improbable. This provision implies that, for a dual windshield wiper system failure (which is typically not extremely improbable), the openable side window is not required if adequate vision can still be maintained through the windshield or side window.
- Paragraph (b)(4)(ii) also allows relief for the openable side window if it can be demonstrated that sufficient pilot view is still provided in the event of an encounter with severe hail, birds, or insects.

The reference in CS 25.773(b)(4)(ii) to severe hail, birds, and insects has not been specifically demonstrated in any manner differently from that of compliance with § 25.773(b)(2)(ii), which only specifies severe hail. Compliance with § 25.773(b)(2)(ii), and with CS (b)(4)(i) and (ii), has typically been demonstrated by compliance statement, system description, or analysis only. This proposed rule would add new § 25.773(b)(4), (b)(4)(i), and (b)(4)(ii) to harmonize with the EASA standard.

Existing Advisory Material for § 25.773

AC 25.773–1, Pilot Compartment View Design Considerations, dated January 8, 1983, provides extensive definition of what constitutes sufficient pilot visibility through the windshield, including suggested means of compliance for windshield wiper speed. The obsolete AMC 25.773(b)(1)(ii) was redundant to AC 25.773–1, and the MSHWG recommended eliminating the AMC. As a result, EASA eliminated this AMC material at Amendment 4 to CS–25. AC 25.773–1 would be retained without change in regard to this proposed rule.

Other Proposed Rulemaking

On June 23, 2010, the FAA issued an NPRM, Notice No. 10–10, Airplane and Engine Certification Requirements in Supercooled Large Drop, Mixed Phase, and Ice Crystal Icing Conditions (75 FR 37311, June 29, 2010) (Docket No. FAA–2010–0636). That NPRM proposes that § 25.773 be modified to expand the icing conditions from those specified in § 25.1419 (i.e., appendix C icing conditions) to include certain supercooled large drop conditions defined in a proposed Appendix O. If that NPRM becomes a final rule prior to this proposed rule, we request comment on maintaining those changes when this proposed rule becomes final.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

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

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

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

The reasoning for this determination follows: The proposed rule would amend the airworthiness standards for transport category airplanes for landing gear retracting mechanisms and pilot compartment view to harmonize with existing more stringent European Aviation Safety Agency (EASA) requirements. For landing gear retracting mechanisms, adoption of the EASA requirements would ensure the landing gear is in the appropriate configuration when necessary; that the landing gear and its supporting structure, doors, and mechanisms operate properly; that the flight crew would be aware of the landing gear position status; and that critical equipment would be protected from tire failure or brake temperatures. For the pilot compartment view, reliable and safe operation during precipitation would be ensured by adoption of the EASA design requirements for flight deck rain removal systems. The most significant of the pilot compartment view requirements is that no single failure of the rain removal system could lead to a loss of pilot view through both windshields. The effect of this proposed requirement is that, for newly certificated airplanes, manufacturers must provide a separate, mechanically and electrically independent method for clearing the windshield during precipitation. This method may include separate flight deck control switches for left and right windshield wipers. The FAA has determined that installation of the second wiper switch would require minimal additional costs when the system is initially designed to comply with the EASA requirement.

Currently, U.S. manufacturers of transport category airplanes meet both FAA and EASA requirements. The FAA expects these manufacturers would want to continue selling future transport category airplanes in Europe and thus would meet EASA requirements. Thus, for these manufacturers and for the majority of manufacturers already in compliance with the EASA requirements, there would be no additional costs. However, the proposed rule would provide benefits from reduced joint certification costs—in the requirements for data collection and analysis, paperwork, and time spent applying for and obtaining approval from the regulatory authorities. The FAA therefore has determined that this proposed rule is cost beneficial due to the overall reduction in compliance costs while maintaining the same level of safety. The FAA requests comments regarding this determination.

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

Regulatory Flexibility Determination

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

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

As noted above, this proposed rule would impose no or little additional costs on part 25 manufacturers. Moreover, all U.S. manufacturers of transport category airplanes exceed the Small Business Administration small-entity criteria of 1,500 employees. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would

incorporate an international standard as the basis for a U.S. standard. Thus the proposed rule complies with the Trade Agreement Act of 1979 and does not create unnecessary obstacles to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $141.3 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

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

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the Addresses section of this preamble.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

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

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov)*;
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

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

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Amend § 25.729 by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(3), (b), (e) introductory text, (e)(5), (f) introductory text, and (f)(1), and by adding paragraphs (e)(7) and (f)(3) to read as follows:

§ 25.729 Operating limitations.

(a) * * *

(1) * * *

(ii) The combination of friction loads, inertia loads, brake torque loads, air loads, and gyroscopic loads resulting from the wheels rotating at a peripheral speed equal to 1.23 V_{SR} (with the wing-flaps in takeoff position at design takeoff weight), occurring during retraction and extension at any airspeed up to 1.5 V_{SR1} (with the wing-flaps in the approach position at design landing weight), and

(iii) Any load factor up to those specified in § 25.345(a) for the wing-flaps extended condition.

* * * * *

(3) Landing gear doors, their operating mechanism, and their supporting structures must be designed for the yawing maneuvers prescribed for the airplane in addition to the conditions of airspeed and load factor presented in paragraphs (a)(1) and (2) of this section.

(b) *Landing gear lock.* There must be positive means to keep the landing gear extended in flight and on the ground. There must be positive means to keep the landing gear and doors in the correct retracted position in flight, unless it can be shown that lowering of the landing gear or doors, or flight with the landing gear or doors extended, at any speed, is not hazardous.

* * * * *

(e) *Position indicator and warning device.* If a retractable landing gear is used, there must be a landing gear position indicator easily visible to the pilot or to the appropriate crew members (as well as necessary devices to actuate the indicator) to indicate without ambiguity that the retractable units and their associated doors are secured in the extended (or retracted) position. The means must be designed as follows:

* * * * *

(5) The system used to generate the aural warning must be designed to minimize false or inappropriate alerts.

* * * * *

(7) A clear indication or warning must be provided whenever the landing gear position is not consistent with the landing gear selector lever position.

(f) *Protection of equipment on landing gear and in wheel wells.* Equipment that is essential to the safe operation of the airplane and that is located on the landing gear or in wheel wells must be protected from the damaging effects of—

(1) A bursting tire;

* * * * *

(3) Possible wheel brake temperatures.

3. Amend § 25.773 by revising paragraph (b)(2) and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(b) * * *

(2) No single failure of the systems used to provide the view required by paragraph (b)(1) of this section may cause the loss of that view by both pilots in the specified precipitation conditions.

(3) The first pilot must have a window that—

(i) Is openable under the conditions prescribed in paragraph (b)(1) of this section when the cabin is not pressurized;

(ii) Provides the view specified in paragraph (b)(1) of this section; and

(iii) Provides sufficient protection from the elements against impairment of the pilot's vision.

(4) The openable window specified in paragraph (b)(3) of this section need not be provided if it is shown that an area of the transparent surface will remain clear sufficient for at least one pilot to land the airplane safely in the event of—

(i) Any system failure or combination of failures which is not extremely improbable, in accordance with § 25.1309, under the precipitation conditions specified in paragraph (b)(1) of this section.

(ii) An encounter with severe hail, birds, or insects.

* * * * *

Issued in Washington, DC, on December 29, 2010.

K.C. Yanamura,

Acting Director, Aircraft Certification Service.

[FR Doc. 2010–33347 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1307; Directorate Identifier 2010–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 22, 2011.

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

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

For service information identified in this proposed AD, contact Bombardier,

Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1307; Directorate Identifier 2010–NM–049–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–49R1, dated January 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system. This directive mandates the revision of the approved maintenance schedule to include these new tasks, including phase-in schedules.
>
> This revision clarifies the applicability of the directive for CL–600–2A12 aircraft, serial numbers 3001 through 3066, and for CL–600–2B16 aircraft, serial numbers 5001 through 5194. The directive is only applicable to these aircraft if Bombardier Service Bulletin (SB) 601–0590 [Scheduled Maintenance Instructions (MSG–3) Derived—Qualification] has been incorporated. There is no change required to the approved maintenance schedule if SB 601–0590 has not been incorporated.

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

Relevant Service Information

Bombardier has issued the following service information:

- Challenger 601 Time Limits/Maintenance Checks, PSP 601–5, Revision 38, dated June 19, 2009.
- Challenger 601 Time Limits/Maintenance Checks, PSP 601A–5, Revision 34, dated June 19, 2009.
- Challenger 604 Time Limits/Maintenance Checks, CH 604 TLMC, Revision 13, dated August 12, 2009.
- Challenger 605 Time Limits/Maintenance Checks, CH 605 TLMC, Revision 1, dated August 12, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 103 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,755, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–1307; Directorate Identifier 2010–NM–049–AD.

Comments Due Date

(a) We must receive comments by February 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category.

(1) Bombardier, Inc. Model CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.

(2) Bombardier, Inc. CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.

(3) Bombardier, Inc. CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.

(4) Bombardier, Inc. CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Codes 30 and 36: Ice and Rain Protection and Pneumatic, respectively.

Reason

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

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

Compliance

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

Actions

(g) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the applicable tasks identified in table 1 of this AD.

TABLE 1—AIRWORTHINESS LIMITATIONS TASKS

For Bombardier, Inc. model—	Incorporate task(s)—	Identified in—
CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–101 and 30–11–00–102	Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601–5, Revision 38, dated June 19, 2009.
CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–101 and 30–11–00–102	Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601A–5, Revision 34, dated June 19, 2009.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.	30–11–00–101 and 36–21–00–101	Bombardier Challenger 604 Time Limits/Maintenance Checks, CH 604 TLMC, Revision 13, dated August 12, 2009.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.	30–11–00–101 and 36–21–00–101	Bombardier Challenger 605 Time Limits/Maintenance Checks, CH 605 TLMC, Revision 1, dated August 12, 2009.

(h) For all tasks identified in paragraph (g) of this AD, the initial compliance times for those tasks are within the applicable times specified in table 2 of this AD.

TABLE 2—INITIAL COMPLIANCE TIMES FOR AIRWORTHINESS LIMITATIONS TASKS

Bombardier, Inc. model—	Task(s)—	Initial compliance time (whichever occurs later)—	
CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive; and CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–101	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30–11–06–204 in Section 5–20–15 of the applicable Time Limits/Maintenance Checks manual; whichever occurs later.	Within 240 flight hours after the effective date of this AD.
CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive; and CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–102	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30–13–00–205 in Section 5–20–15 of the applicable Time Limits/Maintenance Checks manual; whichever occurs later.	Within 240 flight hours after the effective date of this AD.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.	30–11–00–101 and 36–21–00–101.	Prior to the accumulation of 6,400 total flight hours; except for airplanes having 6,400 total flight hours or more as of the effective date of this AD on which the task has not been accomplished: Prior to the next scheduled 6,400 flight hour task inspection or prior to the next scheduled accomplishment of Task 57–10–00–208 in the applicable Time Limits/Maintenance Checks manual, whichever occurs first.	Within 320 flight hours after the effective date of this AD.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.	30–11–00–101 and 36–21–00–101.	Prior to the accumulation of 6,400 total flight hours.	Within 320 flight hours after the effective date of this AD.

(i) After accomplishing the actions required by paragraph (g) of this AD, no alternative tasks or task intervals may be used unless the tasks or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2009–49R1, dated January 21, 2010, and the service information specified in Table 1 of this AD for related information.

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33329 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1306; Directorate Identifier 2010–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault-Aviation Model FALCON 7X Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A design review has revealed a potential dormant failure of the Ram Air Turbine (RAT) heating system. If this failure occurs, it could lead to the freezing of the RAT mechanism and the consequent non-deployment of the RAT when needed.

* * * * *

Non-deployment of the RAT could result in insufficient electrical power to operate the fly-by-wire system, and

subsequent loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 22, 2011.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1306; Directorate Identifier 2010–NM–112–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0033, dated March 3, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A design review has revealed a potential dormant failure of the Ram Air Turbine (RAT) heating system. If this failure occurs, it could lead to the freezing of the RAT mechanism and the consequent non-deployment of the RAT when needed.
>
> The purpose of this AD is to require a repetitive functional test of the RAT heater * * *.

Non-deployment of the RAT could result in insufficient electrical power to operate the fly-by-wire system, and subsequent loss of control of the airplane. The corrective action is repairing using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 21 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,785, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault-Aviation: Docket No. FAA–2010–1306; Directorate Identifier 2010–NM–112–AD.

Comments Due Date

(a) We must receive comments by February 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault-Aviation Model FALCON 7X airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

A design review has revealed a potential dormant failure of the Ram Air Turbine (RAT) heating system. If this failure occurs, it could lead to the freezing of the RAT mechanism and the consequent non-deployment of the RAT when needed.

* * * * *

Non-deployment of the RAT could result in insufficient electrical power to operate the fly-by-wire system, and subsequent loss of control of the airplane.

Compliance

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

Actions

(g) At the applicable times specified in paragraph (g)(1) or (g)(2) of this AD, do a functional test of the RAT heater using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Repeat the functional test of the RAT heater thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. If any functional test fails, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA (or its delegated agent).

(1) For Falcon 7X airplanes on which modification M0305 has not been done and on which Dassault Service Bulletin 7X–018, dated March 6, 2009, has not been done: Within 650 flight hours after the effective date of this AD, do a functional test of the RAT heater and repeat the functional test of the RAT heater thereafter at intervals not to exceed 650 flight hours.

(2) For Falcon 7X airplanes on which modification M0305 has been done or on which Dassault Service Bulletin 7X–018, dated March 6, 2009, has been done: Within 1,900 flight hours after the effective date of this AD or after modification M0305 or Dassault Service Bulletin 7X–018, dated March 6, 2009, has been done, whichever occurs later, do a functional test of the RAT heater: Repeat the functional test of the RAT heater thereafter at intervals not to exceed 1,900 flight hours.

Note 1: Additional guidance for doing the functional test of the RAT heater required by paragraph (g) of this AD can be found in Task 24–50–25–720–801, Functional Test of the RAT Heater, dated January 16, 2009, of the Dassault Falcon 7X Aircraft Maintenance Manual (AMM).

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI provides an option of inserting the MCAI into the Falcon 7X AMM Chapter 5–40, pending publication of the revised AMM Chapter 5–40. This AD does not have that option.

(2) The MCAI requires doing the actions in accordance with Maintenance Task 24–50–25–720–801, Chapter 5–40, of the Dassault Falcon 7X AMM. However, this AD requires that the actions be done using a method approved by the FAA or EASA (or its delegated agent).

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2010–0033, dated March 3, 2010, for related information.

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33334 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1304; Directorate Identifier 2010–NM–254–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

product. The MCAI describes the unsafe condition as:

* * * under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 22, 2011.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1304; Directorate Identifier 2010–NM–254–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0156, dated August 3, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * The FAA has published Special Federal Aviation Regulation (SFAR) 88, and the [Joint Aviation Authorities] JAA has published Interim Policy INT/POL/25/12. The design review conducted by Fokker Services on the Fokker F28 type design in response to these regulations revealed that, under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

For the reasons described above, this AD requires a one-time [detailed] inspection to investigate if a clearance of 3 mm (0.12 inch) or more is available between the FQTU probes wiring and the surrounding reinforcement structure of the wing upper skin and corrective rework actions, depending on findings.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category

airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,020, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 21 work-hours and require parts costing $0, for a cost of $1,785 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2010–1304; Directorate Identifier 2010–NM–254–AD.

Comments Due Date

(a) We must receive comments by February 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

* * * under certain conditions, an ignition source may develop in the wing tank vapour space, due to insufficient clearance between the wiring along the Fuel Quantity Tank Units (FQTU's) and the local reinforcing structure around the upper skin cut-out.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing tank explosion and consequent loss of the aeroplane.

* * * * *

Compliance

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

Detailed Inspection and Corrective Actions

(g) At the next scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, do a detailed inspection for minimum clearance of the gap between the FQTU wiring harness and the outer wing FQTU hole reinforcement structure, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010.

(h) If during the inspection required by paragraph (g) of this AD, the minimum clearance is found to be insufficient, as defined in the Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010, before further flight, rework the surrounding structure to remove the possibility of an ignition source, in accordance with the

Accomplishment Instructions of Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Inspections accomplished before the effective date of this AD according to Fokker Service Bulletin SBF28–57–097, dated May 6, 2010, are considered acceptable for compliance with the requirements of paragraph (g) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0156, dated August 3, 2010; and Fokker Service Bulletin SBF28–57–097, Revision 1, dated June 10, 2010; for related information.

Issued in Renton, Washington, on December 28, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33337 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1305; Directorate Identifier 2010–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model 382, 382B, 382E, 382F, and 382G airplanes. The existing AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. This proposed AD would correct certain part number references, add an additional inspection area, and for certain airplanes, require certain actions to be re-accomplished according to revised service information. This proposed AD results from a report of incorrect accomplishment information in the service information cited by the existing AD. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 22, 2011.

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

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

For service information identified in this proposed AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Neil Duggan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5576; fax (404) 474–5606.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

ADDRESSES section. Include "Docket No. FAA–2010–1305; Directorate Identifier 2010–NM–074–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

On September 11, 2008, we issued AD 2008–20–01, amendment 39–15680 (73 FR 56464, September 29, 2008), for all Model 382, 382B, 382E, 382F, and 382G airplanes. That AD requires revising the maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. We issued that AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2008–20–01, we received information from the manufacturer that Lockheed Service Bulletin 382–28–21, Revision 2, dated November 20, 2006 (referenced in AD 2008–20–01 as a source of additional guidance), contained an error in referencing certain part numbers for tube, fuel tank, and bulkhead joint jumpers. The part numbers as referenced in Revision 2 of that service bulletin do not exist. The manufacturer has published Lockheed Service Bulletin 382–28–21, Revision 4, dated January 6, 2010, to provide the correct part number references. We have revised Table 1 of this AD accordingly.

We have also received information from the manufacturer that the last two bulleted steps of paragraphs 2.C.(2)(b)*5* and 2.C.(2)(c)*3* of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, contain an error. Those steps specify that the GFI FAILURE and GROUND FAULT DETECTED lights illuminate for 2 seconds. An alternate means of compliance (AMOC) for AD 2008–20–01 was issued to disregard those steps. The manufacturer has advised that it is planning to publish a revision to Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008. However, we have determined that delaying this action until after the release of this planned revision is not warranted, since sufficient notice of the error in Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, exists.

Relevant Service Information

We have also reviewed Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008. That service bulletin describes procedures that are similar to those in Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006 (which was referenced in AD 2008–20–01 as a source of additional guidance). However, Revision 4 of Lockheed Service Bulletin 382–28–19 specifies an additional inspection area (fuel probes) for the dry bay and other areas and revises actions. Revision 4 of that service bulletin also specifies that for airplanes on which the actions described in Revision 3 of Lockheed Service Bulletin 382–28–19 are done, it is necessary to do the additional action of inspecting the fuel probes when doing the zonal inspection of the dry bay areas and other areas and re-accomplish certain inspections of certain fuel system electrical wires (such as ensuring that generator wire bundles are separated from fuel tank boundaries, certain wire bundles are spot tied with certain lacing braid, and that the fuel quantity indication system (FQIS) wiring in certain locations is routed separately from AC power wires and is shielded using the correct standard).

We have also reviewed Lockheed Service Bulletin 382–28–20, Revision 11, dated April 20, 2010. That service bulletin describes procedures that are similar to Lockheed Service Bulletin 382–28–20, Revision 5, dated June 19, 2008 (which was referenced as a source of guidance in AD 2008–20–01), for installing ground fault interrupters (GFIs) and flame arrestors for protection of the fuel system.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2008–20–01 and would retain the requirements of the existing AD. This

proposed AD would also require certain actions to be re-accomplished according to revised service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Information."

Difference Between the Proposed AD and the Service Information

Although Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008, describes procedures for notifying Lockheed of any discrepancies found during inspection, this proposed AD would not require that action.

Explanation of Change to This AD

We have removed the "Service Bulletin Reference" paragraph from this NPRM. That paragraph was identified as paragraph (f) in AD 2008–20–01. Instead, we have provided the full service bulletin citations throughout this NPRM.

Explanation of Change to Applicability

We have revised the NPRM to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

There are about 62 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate per hour is $85. The costs of the new requirements of this proposed AD are as follows:

ESTIMATED COSTS FOR NEW ACTIONS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of fuel probes	24	None	$2,040, per inspection cycle	24	$48,960, per inspection cycle.
Actions necessary for airplanes on which Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, has been done.	24	None	$2,040	24	$48,960.

The current costs for this proposed AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS FOR ACTIONS REQUIRED BY AD 2008–20–01

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	1	None	$85	24	$2,040
Installation of new, improved fuel dump masts	12	$10,288	11,308	24	271,392
Dry bay zonal inspection, inspection and repair of static ground terminals, marking the wiring for the fuel quantity indicating system, initial inspection of lightning and static bonding jumpers	952	None	80,920	24	1,942,080
Installation of GFIs and flame arrestors	120	115,000	125,200	24	3,004,800
Initial inspection of GFIs and flame arrestors	8	None	680	24	16,320
Installation of lightning bonding jumpers	910	10,000	87,350	24	2,096,400
Sealant application	320	None	27,200	24	652,800

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–15680 (73 FR 56464, September 29, 2008) and adding the following new AD:

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2010–1305; Directorate Identifier 2010–NM–074–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 22, 2011.

Affected ADs

(b) This AD supersedes AD 2008–20–01, Amendment 39–15680.

Applicability

(c) This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (o) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

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

Unsafe Condition

(e) This AD results from a design review of the fuel tank systems. The Federal Aviation Administration is issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–20–01, With New Service Information

Maintenance Program Revision

(g) Before December 16, 2008, revise the maintenance program to incorporate the fuel system limitations (FSLs) and the critical design configuration control limitations (CDCCLs) specified in the Accomplishment Instructions of the Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008; except as provided by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and except that the modifications and initial inspections specified in Table 1 of this AD must be done at the compliance time specified in paragraph (h) of this AD.

(1) For the CDCCLs specified in paragraphs 2.C.(3)(e), 2.C.(3)(h), 2.C.(4)(a), 2.C.(5)(c), 2.C.(7)(h), and 2.C.(8) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, do the applicable actions in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006; or Revision 4, dated September 18, 2008. After the effective date of this AD, use only Revision 4.

(2) Where paragraph 2.C.(1)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specifies to change the maintenance program to indicate that repetitive inspections of the lightning and static bonding jumpers must be done in accordance with Lockheed Service Bulletin 382–28–21, instead do the repetitive inspections in accordance with Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006; or Revision 4, dated September 18, 2008. After the effective date of this AD, use only Revision 4.

(3) Where Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specifies to inspect, this AD requires doing a general visual inspection.

Note 2: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Fuel System Modifications, Initial Inspections, and Repair If Necessary

(h) Within 36 months after November 3, 2008 (the effective date of AD 2008–20–01), do the applicable actions specified in Table 1 of this AD, and repair any discrepancy before further flight, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.

TABLE 1—MODIFICATIONS AND INITIAL INSPECTIONS

Action	Additional source of guidance for accomplishing the action
For airplanes having any serial number prior to 4962: Install new, improved fuel dump masts in accordance with paragraph 2.C.(1)(d) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–9, dated May 13, 1983.
Mark the fuel quantity indicating system (FQIS) wires in accordance with paragraphs 2.C.(1)(a)*2,* 2.C.(4)(b), and 2.C.(4)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Do the dry bay zonal inspection and inspect the static ground terminals of the fuel system plumbing in accordance with paragraph 2.C.(1)(a) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Install ground fault interrupters (GFIs) and flame arrestors for protection of the fuel system in accordance with paragraphs 2.C.(1)(b) and 2.C.(7)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–20, Revision 11, dated April 20, 2010.

TABLE 1—MODIFICATIONS AND INITIAL INSPECTIONS—Continued

Action	Additional source of guidance for accomplishing the action
Inspect the GFIs for protection of the fuel system in accordance with paragraph 2.C.(1)(b)*1* of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Paragraph 2.C.(2) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.
Install the lightning bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) and 2.C.(6)(a) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–21, Revision 4, dated January 6, 2010.
Inspect the lightning and static bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Apply a certain sealant to the interior of the main wing fuel tanks; and apply a certain sealant to all external fuel tank nose caps, mid sections, and tail sections; as applicable; in accordance with paragraphs 2.C.(1)(e)*1,* 2.C.(1)(e)*3,* and 2.C.(7)(i)*1* of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–24, Revision 1, dated November 5, 2007, including the Errata Notice, dated January 7, 2008.

No Alternative Inspections, Inspection Intervals, or CDCCLs

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (k) of this AD.

No Reporting Requirement

(j) Although Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, specifies to notify Lockheed of any discrepancies found during inspection, this AD does not require that action.

New Requirements of This AD

Incorrect Steps in a Service Bulletin

(k) Where the last two bulleted steps of paragraphs 2.C.(2)(b)*5* and 2.C.(2)(c)*3* of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specify that the GFI FAILURE and GROUND FAULT DETECTED lights illuminate for 2 seconds, this AD does not require those steps.

Additional Inspection Area

(l) For airplanes on which Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, has not been done: Where Table 1 of this AD specifies to do the dry bay zonal inspection, do an inspection of the fuel probes as part of the dry bay zonal inspections, in accordance with the service information specified in paragraph (h) of this AD for the dry bay zonal inspections. Do the inspections at the time specified in paragraph (h) of this AD, or within 9 months after the effective date of this AD, whichever occurs later.

Actions for Airplanes on Which a Previous Issue of Lockheed Service Bulletin 382–28–19 Was Done

(m) For airplanes on which any action was done in accordance with Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006: Within the compliance time specified in paragraph (h) of this AD, or within 9 months after the effective date of this AD, whichever occurs later, do the actions required by paragraphs (m)(1) through (m)(4) of this AD and repair any discrepancy before further flight, in accordance with Accomplishment Instructions of Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008. Although Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008, specifies to notify Lockheed of any discrepancies found during inspection, this AD does not require that action.

(1) Inspect the fuel probes as part of the zonal inspections of the dry bay areas and other areas.

(2) Inspect generator feeder and control wire bundles for correct separation from other wires in the wing leading edge and fuselage areas, and for correct separation from fuel tank boundaries in the wing leading edge area.

(3) Inspect for correct spot-tying of certain wire bundles that are within 2 to 12 inches of hot equipment or wires with flame-resistant lacing braid, or, for wiring in powerplant areas, with fiberglass braid.

(4) Inspect for use of the correct shielding specification and separation of the FQIS wiring in certain locations from AC power wires.

Credit for Actions Accomplished in Accordance With Previous Service Information

(n) Actions done before the effective date of this AD in accordance with Lockheed Service Bulletin 382–28–20, Revision 8, dated October 13, 2009; Revision 9, dated December 14, 2009; or Revision 10, dated March 18, 2010; is acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Neil Duggan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5576; fax (404) 474–5606.

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

(3) AMOCs approved for AD 2008–20–01 are approved as AMOCs for this AD.

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33335 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Minneapolis, MN, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces four fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Minneapolis, MN. The purpose of these meetings is to provide interested parties an opportunity to present views,

recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Friday, March 18, 2011, from 2:30 p.m.–4 p.m.; Saturday, March 19, 2011, from 8:30 a.m.–11 a.m.; Monday, March 21, 2011, from 7:30 p.m.–9 p.m., and Tuesday, March 22, 2011, from 7:30 p.m.–9 p.m. Comments must be received on or before May 6, 2011.

ADDRESSES: (1) The meeting on Friday, March 18, 2011, will be held at the Metropolitan Airports Commission (MAC), 6040 28th Avenue, South, Minneapolis, MN 55450. (2) The meeting on Saturday, March 19, 2011, will be held at the In Flight Pilot Training, LLC., 10,000 Flying Cloud Drive, Eden Prairie, MN 55347. (3) The meeting on Monday, March 21, 2011, will be held at the Minnesota Army National Guard, Aviation Facility, 206 Airport Road, St. Paul, MN 55107. (4) The meeting on Tuesday, March 22, 2011, will be held at the Metropolitan Airports Commission (MAC), 6040 28th Avenue, South, Minneapolis, MN 55450.

Comments: Send comments on the proposal, in triplicate, to: Anthony D. Roetzel, Manager, Operations Support Group, AJV–C2, Central Service Center, Air Traffic Organization, FAA Southwest Regional Office, 2601 Meacham Boulevard, Fort Worth, TX 76137.

FOR FURTHER INFORMATION CONTACT: To obtain details, including a graphic depiction regarding this proposal, please contact Jim Shadduck, FAA Support Manager, Minneapolis Airport Traffic Control Tower, 6311 34th Avenue, South, Minneapolis, MN 55450; telephone: (612) 713–4065.

SUPPLEMENTARY INFORMATION:

Meeting Procedures:

(a) Doors open 30 minutes prior to the beginning of each meeting. The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Central Service Center. A representative from the FAA will present an informal briefing on the planned modification to the Class B airspace at Minneapolis, MN. Following the briefing, each attendee will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the plan to modify the Class B airspace area at Minneapolis, MN, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meeting will be filed in the docket.

Agenda for the Meetings

—Sign-in.
—Presentation of meeting procedures.
—FAA briefing of the proposed Class B airspace area modifications.
—Solicitation of public comments.
—Closing comments.

Issued in Washington, DC, on December 21, 2010.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2010–33305 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No: FAA 2010–1326]

Marking Meteorological Evaluation Towers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed revision to Advisory Circular; request for comments.

SUMMARY: The FAA is considering revising its current Advisory Circular on Obstruction Marking and Lighting to include guidance for Meteorological Evaluation Towers (METs). These towers are erected in remote and rural areas, often are less than 200 feet above ground level (AGL), and fall outside of FAA regulations governing tall structures and their impact on navigable airspace. The proposed marking guidance would enhance the conspicuity of the towers and address the safety related concerns of low level agricultural operations. The FAA seeks comment on the proposed guidance.

DATES: Comments must be received on or before February 4, 2011.

ADDRESSES: You may send comments identified by docket number FAA 2010–1326 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send Comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Barron, Obstruction Evaluation Services, Air Traffic Organization, AJV–15, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783; e-mail: *sheri.edgett-baron@faa.gov.*

SUPPLEMENTARY INFORMATION:

14 CFR Part 77

Title 49 of the United States Code (U.S.C.), section 40103(a)(1), provides that the "United States Government has exclusive sovereignty of airspace of the United States." Paragraph (b) of this section directs the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of the airspace."

In recognition of the threat tall structures can pose to aviation safety, 49 U.S.C. 44718 directed the FAA to promulgate regulations requiring notice of proposed structures or alterations of existing structures when the notice will promote safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports. (14 CFR part 77.) The agency was further directed to study such structures and determine the extent of any adverse impacts on the safe and efficient use of the airspace, facilities or equipment.

Consistent with the above statutory and regulatory framework, the FAA has adopted policy to establish the standards for which the FAA identifies "obstructions" and "hazards" in the navigable airspace in furtherance of its responsibilities to manage the navigable airspace safely and efficiently. *See* 14 CFR part 77, and FAA Order 7400.2, Procedures for Handling Airspace Matters. The FAA issues a determination advising whether the structure would be a hazard to air navigation. The FAA may condition its determination of no hazard with the structure appropriately being marked and lighted, as specified in the determination. FAA criteria for marking and lighting of tall structures are found in Advisory Circular No. 70/7460–1, Obstruction Marking and Lighting.

Unless within the vicinity of an airport,[1] proponents of new structures or alterations of existing structures must file notice with the FAA for "any construction or alteration of more than 200 feet in height above the ground level at its site." 14 CFR 77.13(a)(1). Consequently, as the FAA does not study these structures there is no FAA determination that would specify the marking of these structures.

Background

The emphasis to discover sources of renewable energy in the United States has prompted individuals and companies to explore all means of energy generation. Wind energy, converted into electrical energy by wind turbines, is widely pursued as a viable alternative. In order to determine if a site meets requirements to construct a wind turbine or wind farm, companies erect METs. These towers are used to gather wind data necessary for site evaluation and development of wind energy projects. The data generally is gathered over a year to ascertain if the targeted area represents a potential location for the installation of wind turbines.

Requirements to file notice under part 77 generally do not apply to structures at heights lower than 200 feet AGL unless close to an airport environment. Therefore, the FAA does not have a database of MET locations, nor does it conduct an aeronautical study to determine whether the particular structure would be hazardous to aviation. These towers are often installed in remote or rural areas, just under 200 feet above ground level (AGL), usually at 198 feet or less. These structures are portable, erected in a matter of hours, installed with guyed wires and constructed from a galvanized material often making them difficult to see in certain atmospheric conditions.

While the METs described above are not subject to the provisions of part 77 and therefore, the FAA does not conduct aeronautical studies to determine whether these structures are obstructions and adversely impact air navigation, the FAA does acknowledge that these towers under certain conditions may be difficult to see by low-level agricultural flights operating under visual flight rules. The color, portability of these towers, their placement in rural and remote areas, and their ability to be erected quickly are factors that pilots should be aware of when conducting operations in these areas.

The FAA has received complaints and inquiries from agricultural operations in remote or rural areas regarding the safety impacts of these towers on low-level agricultural operations. In addition, representatives from the National Agricultural Aviation Association (NAAA) met with the FAA on November 16, 2010 to discuss safety specific concerns of the aerial application industry. The NAAA suggested safety guidelines and marking and lighting criteria in order to reduce the risks for aerial applications. A copy of the material provided by NAAA has been placed in the docket.

Proposed Guidance

The FAA is considering revising AC No. 70/7460–1, Obstruction Marking and Lighting, to include guidance for the voluntary marking of METs that are less than 200 feet AGL. The FAA recognizes the need to enhance the conspicuity of these METs, particularly for low-level agricultural operations and seeks public comment on the guidance provided below.

The FAA recommends that the towers be painted in accordance to the marking criteria contained in Chapter 3, paragraphs 30–33 of AC No. 70/7460–1. In particular, we reference paragraph 33(d), which discusses alternate bands of aviation orange and white paint for skeletal framework of storage tanks and similar structures, and towers that have cables attached. The FAA also recommends spherical and/or flag markers be used in addition to aviation orange and white paint when additional conspicuity is necessary. Markers should be installed and displayed according to the existing standards contained in Chapter 3, paragraph 34 of AC No. 70/70460–1.

The FAA is also considering recommending high visibility sleeves on the outer guy wires of these METs. While the current Obstruction Marking and Lighting Advisory Circular does not contain such guidance for high visibility sleeves, the FAA specifically seeks comments on this recommendation.

The FAA anticipates that a uniform and consistent scheme for voluntarily marking these METs would enhance safety by making these towers more readily identifiable for agricultural operations.

Issued in Washington, DC, on December 29, 2010.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2010–33310 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

[1] 14 CFR 77.13(a), paragraphs (2), (3), (4) and (5) are not relevant to this issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0846; FRL–9246–8]

Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a portion of the State Implementation Plan (SIP) revision submitted by the State of New Mexico for the purpose of addressing the "good neighbor" requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. The SIP revision addresses the requirement that New Mexico's SIP must have adequate provisions to prohibit emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is proposing to disapprove the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. In this action, EPA is also proposing to promulgate a Federal Implementation Plan (FIP) to prevent emissions from New Mexico sources from interfering with other states' measures to protect

visibility, and to implement nitrogen oxides (NO_X) and sulfur dioxide (SO_2) emission limits necessary at one source to prevent such interference. In addition, EPA is proposing sulfuric acid (H_2SO_4) and ammonia (NH_3) hourly emission limits at the same source, to minimize the contribution of these compounds to visibility impairment. EPA is proposing monitoring, recordkeeping and reporting requirements to ensure compliance with such emission limitations. EPA also proposes that compliance with the emission limits be within three (3) years of the effective date of our final rule. Furthermore, EPA is proposing the FIP to address the requirement for best available retrofit technology (BART) for NO_X for this source. This action is being taken under section 110 and part C of the CAA.

DATES: *Comments.* Comments must be received on or before March 7, 2011.

Public Hearing. EPA intends to hold a public hearing in Farmington, New Mexico to accept oral and written comments on the proposed rulemaking. EPA will provide notice and additional details at least 30 days prior to the hearing in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2010–0846, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2010–0846. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The state submittal is also available for public inspection during official business hours, by appointment, at the New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7186, fax number (214) 665–7263; e-mail address *kordzi.joe@epa.gov.*

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

Outline

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  A. SIP and FIP Background
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I. Overview of Proposed Action

We are proposing to disapprove a portion of the SIP revision submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of the CAA section 110(a)(2)(D)(i) with respect to visibility for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. As a result of the proposed disapproval, we are also proposing a FIP to address the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility to ensure that emissions from New Mexico sources do not interfere with the visibility programs of other states. We are proposing to find that New Mexico sources, other than one, are

sufficiently controlled to eliminate interference with the visibility programs of other states, and for the one remaining source we are proposing to impose specific emissions limits that will eliminate such interstate interference. We are simultaneously evaluating whether the source at issue meets certain other related requirements under the Regional Haze (RH) program. As a result of this evaluation, we are likewise proposing to find that the proposed controls for the source at issue will address the NO_X BART requirements of the RH program. In this action, we are not addressing whether the state has met other requirements of the RH program and will address those requirements in later actions.

Section 110(a)(2)(D)(i)(II) of the Act requires that states have a SIP, or submit a SIP revision, containing provisions "prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility."

Because of the impacts on visibility from the interstate transport of pollutants, we interpret the "good neighbor" provisions of section 110 of the Act described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. New Mexico submitted a SIP to address these requirements in September 2007. In this action, we are proposing to disapprove the New Mexico SIP submission as not meeting the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility. The SIP submission made by the state anticipated the timely submission of a substantive RH SIP submission as the means of meeting the requirements of section 110(a)(2)(D)(i)(II). New Mexico has yet to submit such a RH SIP. In addition, the state has not revised its submission to address the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility by any alternative means.

By December 17, 2007, each State with one or more Class I Federal areas was also required to submit a RH SIP that included goals that provide for reasonable progress towards achieving natural visibility conditions. 40 CFR 51.308(d)(1). We previously found that New Mexico had failed to submit a complete RH SIP by December 17, 2007. 74 FR 2392 (January 15, 2009). This finding started a two year clock for the promulgation of a RH FIP by EPA or the approval of a complete RH SIP from New Mexico. CAA § 110(c)(1).

To address the above concerns, we are also proposing to promulgate a FIP that ensures that emissions from New Mexico sources do not interfere with other states' measures to protect visibility in accordance with section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, and also to address the requirements under the RH program for BART by imposing limits for NO_X for the San Juan Generating Station (SJGS).[1] This FIP will limit the emissions of SO_2 and NO_X from the SJGS. Together, the reduction in NO_X from our proposed NO_X BART determination, and the proposed SO_2 emission limits to establish federal enforceability of current SO_2 levels will serve to ensure there are enforceable mechanisms in place to prohibit New Mexico NO_X and SO_2 emissions from interfering with efforts to protect visibility in other states pursuant to the requirements of section 110(a)(2)(D)(i)(II) of the CAA. NO_X and SO_2 are significant contributors to visibility impairment in and around New Mexico. As the Four Corners Task Force notes,[2] "[r]eduction of NO_X is particularly important to improve visibility at Mesa Verde National Park, which is 43 km away from SJGS. * * * [V]isibility has degraded at Mesa Verde over the past decade, and the portion of degradation due to nitrate has increased (while there has been no trend in degradation due to sulfate)." For NO_X emissions, we are proposing to require the SJGS to meet an emission limit of 0.05 pounds per million British Thermal Units (lb/MMBtu) at Units 1, 2, 3, and 4, representing an approximately 83% reduction from the SJGS's baseline NO_X emissions. This NO_X limit is achievable by installing and operating Selective Catalytic Reduction (SCR). For SO_2, we are proposing to require the SJGS to meet an emission limit of 0.15 lb/MMBtu. Both of these emission limits would be measured on the basis of a 30-day rolling average. We are also proposing hourly average emission limits for sulfuric acid (H_2SO_4) and ammonia (NH_3) for the SJGS, to minimize the contribution of these compounds to visibility impairment of Class I areas.

Furthermore, we propose that compliance with the emission limits be within three (3) years of the effective date of our final rule. Additionally, we are proposing monitoring, recordkeeping, and reporting requirements to ensure compliance with emission limitations. Please see Section IV (Proposed Action) and the proposed regulation language at the end of this **Federal Register** action for more information.

[1] Unless otherwise specified, when we say the "San Juan Generating Station," or "SJGS," we mean units 1, 2, 3, and 4, inclusive.

[2] Power Plants Section, Four Corners Air Quality Task Force, Report of Mitigation Options, November 1, 2007, *available at: http://www.nmenv.state.nm.us/aqb/4C/Docs/4CAQTF_Report_FINAL_PowerPlants.pdf.*

II. Background

A. SIP and FIP Background

The CAA requires each state to develop a plan that provides for the implementation, maintenance, and enforcement of the NAAQS. CAA section 110(a). We establish NAAQS under section 109 of the CAA. Currently, the NAAQS address six (6) criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The plan developed by a state is referred to as the SIP. The content of the SIP is specified in section 110 of the CAA, other provisions of the CAA, and applicable regulations. A primary purpose of the SIP is to provide the air pollution regulations, control strategies, and other means or techniques developed by the state to ensure that the ambient air within that state meets the NAAQS. However, another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through the interstate transport of pollutants. CAA section 110(a)(2)(D)(i). States are required to update or revise SIPs under certain circumstances. *See* CAA section 110(a)(1). One such circumstance is our promulgation of a new or revised NAAQS. *Id.* Each state must submit these revisions to us for approval and incorporation into the federally-enforceable SIP.

If a State fails to make a required SIP submittal or if we find that the State's submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap. CAA section 110(c)(1). As discussed elsewhere in this notice, we have made findings related to New Mexico SIP revisions needed to address interstate transport and the requirement that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state to protect visibility, pursuant to section 110(a)(2)(D)(i)(II) of the CAA. We are proposing a FIP to address the deficiencies in the New Mexico Interstate Transport SIP.

B. Statutory and Regulatory Framework Addressing Interstate Transport and Visibility

1. The 1997 NAAQS for Ozone and $PM_{2.5}$ and CAA 110(a)(2)(D)(i)

On July 18, 1997, we promulgated new NAAQS for 8-hour ozone and for $PM_{2.5}$. 62 FR 38652. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2) of the CAA lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to the interstate transport of certain emissions.

On April 25, 2005, we published a "Finding of Failure to Submit SIPs for Interstate Transport for the 8-hour Ozone and $PM_{2.5}$ NAAQS." 70 FR 21147. This included a finding that New Mexico and other states had failed to submit SIPs for interstate transport of air pollution affecting visibility, and started a 2-year clock for the promulgation of a FIP by us, unless a State made a submission to meet the requirements of section 110(a)(2)(D)(i) and we approved the submission. *Id.*

On August 15, 2006, we issued our "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). We developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) of the CAA require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

The 2006 Guidance stated that states may make a simple SIP submission confirming that it was not possible at that time to assess whether there is any interference with measures in the applicable SIP for another state designed to "protect visibility" for the 8-hour ozone and $PM_{2.5}$ NAAQS until RH SIPs are submitted and approved. RH SIPs were required to be submitted by December 17, 2007. *See* 74 FR 2392 (January 15, 2009); *see also* discussion *infra* section II.B.2.

On September 17, 2007 we received a SIP from New Mexico to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In this submission, the state indicated that it intended to meet the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility by submission of a timely RH SIP. To date, the state has not made a RH SIP submission. In addition, the state has not made a submission demonstrating noninterference with the visibility programs of other states in accordance with section 110(a)(2)(D)(i)(II) by any other means.

In prior actions, we approved the New Mexico SIP submittal for (1) the "significant contribution to nonattainment" prong of section 110(a)(2)(D)(i) (75 FR 33174, June 11, 2010) and (2) the "interfere with maintenance" and "interfere with measures to prevent significant deterioration" prongs of section 110(a)(2)(D)(i) (75 FR 72688, November 26, 2010). In this action, we are proposing to disapprove the New Mexico Interstate Transport SIP with respect to the requirement that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state to protect visibility. *See* CAA section 110(a)(2)(D)(i)(II). We are proposing to promulgate a FIP in order to cure this defect in the New Mexico Interstate Transport SIP.

2. Visibility Protection

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [3] which impairment results from manmade air pollution." CAA § 169A(a)(1). The terms "impairment of visibility" and "visibility impairment" are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, *i.e.,* "reasonably attributable visibility impairment" (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on RH that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved. *Id.*

Congress added section 169B to the CAA in 1990 to address RH issues, and we promulgated regulations addressing RH in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P (the regional haze rule or RHR). The RHR revised the existing visibility regulations to integrate provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. The requirements for RH, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. States were required to submit the first SIP addressing RH visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

On January 15, 2009, we published a "Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule." 74 FR 2392. We found that New Mexico and other states had failed to submit for our review and approval complete SIPs for improving visibility in the nation's national parks and wilderness areas by the required date of December 17, 2007. We found that New Mexico failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. New Mexico also failed to submit the plan element required by 40 CFR 51.309(d)(4), which

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager" (FLM). CAA section 302(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

requires BART for stationary source emissions of NO_x and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2).[4] This finding started a 2-year clock for the promulgation of a FIP by EPA, unless the State made a RH SIP submission and we approved it.

3. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain major stationary sources with the potential to emit greater than 250 tons or more of any pollutant, in order to address visibility impacts from these sources. Specifically, it requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology," as determined by the State or us in the case of a plan promulgated under section 110(c) of the CAA. CAA section 169A(b)(2)(A). States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The RHR required all states to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e). On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* ("BART Guidelines") to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104.

The process of establishing BART emission limitations can be logically broken down into three steps: first, states identify those sources which meet the definition of "BART-eligible source" set forth in 40 CFR 51.301[5]; second, states determine whether each source "emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area" (a source which fits this description is "subject to BART"); and third, for each source subject to BART, states then identify the appropriate type and the level of control for reducing emissions.

States must consider the following factors in making BART determinations: (1) The costs of compliance; (2) the energy and nonair quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A). Section 51.308(e)(1)(ii)(B) requires that BART determinations for fossil fuel-fired electric generating plants with a total generating capacity in excess of 750 megawatts, must be made according to the BART Guidelines.[6] A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. We have stated that states should use their best judgment in determining whether volatile organic compounds (VOCs) or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The Regional Planning Organizations (RPOs) provided air quality modeling to the states to help them in determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. 70 FR 39104. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. *Id.* Any source with emissions that model above the threshold value would be subject to a BART determination review. *Id.* The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. *Id.* Any exemption threshold set by the state should not be higher than 0.5 deciview. *Id.*

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. *Id.* This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a more useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.

A RH SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five (5) years after the date of our approval of the RH SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a)(2).

4. The Western Regional Air Partnership and Evaluation of Regional Haze Impacts

The Western Regional Air Partnership (WRAP) is a voluntary partnership of state, tribal, federal, and local air agencies dealing with regional air quality issues in the West. Member states include Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The WRAP established various committees to assist in managing and developing RH work products. New Mexico is a WRAP member. The WRAP evaluates air quality impacts, including RH impacts, associated with regionally significant emission sources. In so doing, the WRAP has conducted air quality modeling. The states in the West have

[4] NM has an option to submit a RH SIP under either section 51.308 or section 51.309. Although they have indicated their preference is for the latter, the NO_x BART FIP we are proposing would apply to either.

[5] BART-eligible sources are those sources, which have the potential to emit 250 tons or more of a visibility-impairing air pollutant, that were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

[6] Appendix Y to 40 CFR Part 51—Guidelines for BART Determinations Under the Regional Haze Rule.

used this modeling to establish their reasonable progress goals for RH.[7]

The RH program, as reflected in the regulations, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourage states to work together to develop plans to address haze. The regulations explicitly require each State to address its "share" of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). The States in the West worked together through the WRAP to determine their contribution to visibility impairment at the relevant federal Class I areas in the region and the emissions reductions from each State needed to attain the reasonable progress goals for each area. Regional planning organizations (RPOs) such as the WRAP provided much of the technical work necessary to develop RH SIPs, including the modeling used to establish reasonable progress goals. The WRAP evaluated air quality impacts, including RH impacts, associated with regionally significant emission sources. In so doing, the WRAP conducted air quality modeling. The modeling done by the RPOs relied on assumptions regarding emissions over the relevant planning period. Embedded in these assumptions were anticipated emissions reductions from each of the states in the RPO, including reductions from BART and other measures to be adopted as part of the states long-term strategy for addressing RH. The states in the West, in turn, have used this modeling to establish their reasonable progress goals for RH. The reasonable progress goals in the draft and final RH SIPs that have now been prepared by states in the West accordingly are based, in part, on the emissions reductions from nearby states that were agreed on through the WRAP process.

III. Our Evaluation

A. New Mexico's Interstate Transport SIP

We received a SIP from New Mexico to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on September 17, 2007. Concerning the provision preventing sources in the state from emitting pollutants in amounts which will interfere with efforts to protect visibility in other states, New Mexico stated that:

- New Mexico sources of emissions do not interfere with implementation of reasonably attributable visibility impairment;
- Its December 2003 RH SIP demonstrated reasonable progress in reducing impacts on Class I areas on the Colorado Plateau;[8] and
- The 2007 SIP update for RH will analyze any impacts from New Mexico that extend beyond the Colorado Plateau and determine appropriate long-term strategies for control measures. As mentioned previously, New Mexico has yet to provide this SIP revision.

New Mexico's submission addressed the requirement that it not interfere with the visibility programs of other states by stating that it would submit an approvable RH SIP by December 2007. The state did not otherwise establish that emissions from its sources would not interfere with the visibility programs of other states. After intervening events precluded the development of an approvable RH SIP, the state did not make any subsequent SIP submission to address the requirements of section 110(a)(2)(D)(i)(II) with respect to impacts on the visibility programs of other states. Consequently, because the State did not submit a RH SIP or an alternative means of demonstrating that emissions from its sources would not interfere with the visibility programs of other States, we are proposing disapproval of the SIP received September 17, 2007, with respect to 110(a)(2)(D)(i)(II) and visibility protection. Further, as described in subsequent sections, we are proposing that additional controls are necessary to prevent emissions from New Mexico from interfering with measures to protect visibility in other States.

B. Federal Implementation Plan To Address Interstate Transport and Visibility and the BART Requirements for NO_X

As an initial matter, we note that section 110(a)(2)(D)(i)(II) does not explicitly specify how we should ascertain whether a state's SIP contains adequate provisions to prevent emissions from sources in that state from interfering with measures required in another state to protect visibility. Thus, the statute is ambiguous on its face, and we must interpret that provision.

Our 2006 Guidance recommended that a state could meet the visibility prong of the transport requirements of section 110(a)(2)(D)(i)(II) of the CAA by submission of the RH SIP, due in December 2007. Our reasoning was that the development of the RH SIPs was intended to occur in a collaborative environment among the states. In fact, in developing their respective reasonable progress goals, WRAP states consulted with each other through the WRAP's work groups.[9] As a result of this process, the common understanding was that each State would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. This effort included all states in the WRAP region contributing information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The WRAP states consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals for the Western Class I areas.

We believe that the analysis conducted by the WRAP provides an appropriate means for designing a FIP that will ensure that emissions from sources in New Mexico are not interfering with the visibility programs of other states, as contemplated in section 110(a)(2)(D)(i)(II). In developing their visibility projections using photochemical grid modeling, the WRAP states assumed a certain level of emissions from sources within New Mexico. Although we have not yet received all RH SIPs, we understand that the WRAP states used the visibility projection modeling to establish their own respective reasonable progress goals. Thus, we believe that an implementation plan that provides for emissions reductions consistent with the assumptions used in the WRAP modeling will ensure that emissions from New Mexico sources do not

[7] More information on WRAP and their work can be found on the Internet at *http://www.wrapair2.org* and in the TSD for this action.

[8] In December, 2003, New Mexico submitted its RH SIP pursuant to the requirements of sections 169A and 169B of the CAA and the regional haze rule. However, in *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (DC Cir. 2002), the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2006, EPA issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005). On January 13, 2009, New Mexico resubmitted portions of its RH SIP, but not the requirements addressing reasonable progress pursuant to 40 CFR 51.309(g).

[9] Consultation provided through the WRAP have been documented in calls and meetings on the WRAP Web site, *available* at *http://www.wrapair.org/cal/calendar.php.*

interfere with the measures designed to protect visibility in other states.

Accordingly, we have reviewed the WRAP photochemical modeling emission projections used in the demonstration of reasonable progress towards natural visibility conditions and compared them to current emission levels from sources in New Mexico. We have concluded that all of the sources in New Mexico are achieving the emission levels assumed by the WRAP in its modeling except for the SJGS. The WRAP modeling assumed the SJGS's NO_X emissions would be 0.27 lbs/MMBtu for units 1 and 3, and 0.28 lbs/MMBtu for units 2 and 4, in 2018. The WRAP modeling also assumed SO_2 emissions would be 0.15 lbs/MMBtu in 2018 for the four SJGS units.

The SJGS consists of four (4) coal-fired generating units and associated support facilities. Each coal-fired unit burns pulverized coal and No. 2 diesel oil (for startup) in a boiler, and produces high-pressure steam which powers a steam turbine coupled with an electric generator. Electric power produced by the units is supplied to the electric power grid for sale. Coal for the units is supplied by the adjacent San Juan Mine and is delivered to the facility by conveyor. Units 1 and 2 have a unit capacity of 350 and 360 MW, respectively. Units 3 and 4 each have a unit capacity of 544 MW.

In 2005, the operator of the SJGS, Public Service Company of New Mexico (PNM), entered into a consent decree with the Grand Canyon Trust, Sierra Club, and the New Mexico Environment Department (NMED) to reduce emissions of NO_X, SO_2, particulate matter and mercury.[10] The consent decree imposed emissions restrictions, including the following:

- NO_X: 0.30 lb/mmBtu on a 30-day rolling average.
- SO_2: 90% annual average control, not to exceed 0.250 lb/mmBtu for a seven-day block average.

In a permit modification to the construction permit for SJGS, NMED issued a revised construction permit (NSR Air Quality Permit No. 0063–M6) on April 22, 2008 to incorporate some of the conditions from the consent decree. The construction permit was issued by the Air Quality Bureau of the NMED to SJGS pursuant to the New Mexico Air Quality Control Act and regulations and is considered a federally enforceable permit. We were not a party to the consent decree, but the inclusion of limits from the consent decree that have been included in the construction permit for the facility were issued pursuant to the federally approved construction permitting program of the New Mexico SIP. Specifically, the construction permit includes the NO_X and SO_2 limits from the consent decree that are identified above.[11] Therefore, these NO_X and SO_2 emissions restrictions are federally enforceable. This permit has since been superseded by a further construction permit modification that also includes the consent decree limits on NO_X and SO_2 emissions and is federally enforceable.[12]

Although the SJGS is subject to a federally enforceable permit, the permit's 30-day rolling average NO_X emission limit of 0.30 lb/mmBtu for all units is less restrictive than the emission rates modeled by the WRAP of 0.27 lbs/MMBtu for units 1 and 3, and 0.28 lbs/MMBtu for units 2 and 4 in assessing the daily visibility impacts. We also note the WRAP photochemical modeling utilized an SO_2 emission rate of 0.15 lbs/MMBtu on a continuous basis for all four units. In previous communications to New Mexico and the WRAP, PNM indicated that the 90% annual average control specified in the permit would be expected to yield roughly an annual average emission rate of 0.195 lb/mmBtu of SO_2,[13] which is much higher than the 0.15 lb/mmBtu emission rate utilized in the WRAP's photochemical modeling for assessing daily level impacts. Also, the 90% SO_2 control restriction specified in the permit is an annual average, which allows for short term fluctuations. It also is not directly translatable to an emission limit (e.g., lbs/MMBtu), and requires knowledge of the sulfur content of the coal being burned. Therefore, this limit can further fluctuate depending upon the annual average sulfur content of the coal. This presents an unnecessary enforcement complication. The permit also specifies a 0.250 lb/mmBtu on a 7-day block average for each unit, which is much less restrictive than the 0.15 lb/mmBtu emission rate that was used within the WRAP's photochemical modeling.

Therefore, the permit does not provide the necessary emission limits and enforceable mechanisms to ensure the NO_X and SO_2 emissions used in the WRAP photochemical modeling for the SJGS units will be met. In the absence of an approvable RH SIP, we do not have an enforceable mechanism for ensuring that sources in New Mexico do not impact visibility in other states. Other WRAP states are relying on levels modeled for the SJGS units, developed in consultation, in their demonstration of reasonable progress towards natural visibility conditions. Therefore, any discrepancies between what was included in the WRAP photochemical modeling and what is presently enforceable, is a concern. We have evaluated these discrepancies and determined they are significant due to the changes in visibility projections in the modeling. We have concluded that it is appropriate to establish federally enforceable limits for pollutants that impact visibility projections within the WRAP photochemical modeling.

As discussed in II.A, we are proposing to disapprove New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. In addition, since New Mexico has not submitted a complete RH SIP that should have, among other things, included a review of BART for NO_X at the SJGS, and for both of these requirements we have made a finding of failure to submit,[14] giving us the authority and responsibility to issue a FIP to address the deficiencies in the State's plan, we are also proposing to find that New Mexico sources, except the SJGS, are sufficiently controlled to eliminate interference with the visibility programs of other states. For the SJGS we are proposing to impose specific emissions limits that will eliminate such interstate interference based on current emissions that satisfies the assumptions in the WRAP modeling.

The following sections outline our proposal for addressing the BART requirements for NO_X at SJGS and for ensuring that the SJGS has the controls necessary to prevent emissions from

[10] Consent Decree in *The Grand Canyon Trust and Sierra Club, Plaintiffs, The State of New Mexico, Plaintiff-Intervenor,* v. *Public Service Company of New Mexico, Defendant,* (CV 02–552 BB/ACT (ACE)), lodged in the United States District Court, District of New Mexico, on March 10, 2005, at 15–16.

[11] NO_X limit of 0.30 lb/mmBtu on a 30-day rolling average for each of the four units; SO_2 limit of 90% annual average control for each unit, with a short-term limit not to exceed 0.250 lb/mmBtu for a seven-day block average.

[12] New Mexico Environment Department Air Quality Bureau NSR Air Quality Permit No. 0063–M6R1 was issued on September 12, 2008 and superseded Permit No. 0063–M6.

[13] Comments Received to-Date on the Draft 2018 Base Case Projections, Version: December 21, 2005, *available* at *http://www.wrapair.org/forums/ssjf/documents/eictts/Projections/Summary%20of%20Comments_122105_final.pdf,* pdf pagination 20.

[14] *See* Finding of Failure to Submit SIPs for Interstate Transport for the 8-hour Ozone and $PM_{2.5}$ NAAQS. 70 FR 21147 (April 25, 2005); *see also* Finding of Failure To Submit State Implementation Plans Required by the 1999 Regional Haze Rule. 74 FR 2392 (January 15, 2009).

New Mexico from interfering with the reasonable progress goals in other states.

1. Additional SO_2 Emission Limits for the SJGS

As we discuss above, there are no federally enforceable limits that restrict the SJGS's SO_2 emissions at 0.15 lbs/MMBtu, the rate assumed by the WRAP in its modeling. Therefore, as part of this action, we are proposing to impose an SO_2 emission rate of 0.15 lbs/MMBtu on a 30 day rolling average for units 1, 2, 3, and 4 of the SJGS. By imposing this limit through this action, we will insure that SO_2 emissions from this source are not interfering with the visibility programs of other states. We note an examination of the SJGS's actual emission rates based on emissions reported by our Clean Air Markets Division [15] indicates units 1, 2, 3, and 4 of the SJGS are already meeting these SO_2 emission limits.

We are not making a finding that this SO_2 emission limit satisfies BART for SO_2. NMED has indicated they will submit a RH SIP under 40 CFR 51.309, thus SO_2 BART for the SJGS will be addressed through New Mexico's participation in an SO_2 trading program, under 40 CFR 51.309(d)(4). Should NMED instead submit a RH SIP under 40 CFR 51.308, the SJGS would be subject to an SO_2 BART analysis under 40 CFR 51.308(e).

2. Need for Additional NO_X Controls

As we discuss above, the WRAP assumed in its modeling that the SJGS would achieve NO_X emission rates of 0.27 lbs/MMBtu for units 1 and 3, and 0.28 lbs/MMBtu for units 2 and 4 in its evaluation of daily impacts in photochemical modeling. Based on our approach of relying on the assumptions in the WRAP modeling, additional control would, therefore, be necessary to ensure that emissions from New Mexico sources do not interfere with efforts to protect visibility in other states pursuant to the requirements of section 110(a)(2)(D)(i)(II) of the CAA.

Unlike the case for SO_2, the SJGS will have to install controls and therefore make capital investments to achieve these additional NO_X reductions. As we note above, on January 15, 2009, we published a "Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule." 74 FR 2392. This finding included the plan element required by 40 CFR 51.309(d)(4), which requires BART for stationary source emissions of NO_X and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2). Therefore, rather than making an initial determination to require the controls needed to prevent interference with the visibility programs of other states based on the assumptions in the WRAP photochemical modeling to meet section 110(a)(2)(D)(i)(II) requirements, followed soon thereafter by a separate NO_X BART evaluation, we find it is appropriate to perform that BART evaluation at this time. Addressing both outstanding obligations at this time will be more efficient and will provide greater certainty to the source as to the appropriate NO_X controls needed to meet these two separate but related requirements. Our evaluation of BART for NO_X follows.

3. NO_X BART Evaluation

In June, 2007, PNM submitted its BART evaluation to NMED. That evaluation was revised multiple times to incorporate additional visibility modeling analyses, control technology considerations, and cost analyses. Although not officially submitted to us, NMED completed a NO_X and PM BART determination for the SJGS (referred to herein as the "NMED BART evaluation"), which we have found to be thorough and comprehensive.[16] In making our NO_X BART determination for the SJGS, we drew heavily upon the NO_X BART portion of that document, and used it to help inform our NO_X BART determination for the SJGS. We have incorporated it into our Technical Support Document (TSD) found in the electronic docket for this action. The electronic docket can be found at the Web site *http://www.regulations.gov* (docket number EPA–R06–OAR–2010–0846).

We have determined, as outlined below, that the SJGS is subject to BART and are proposing to require that units 1, 2, 3, and 4 meet an emission limit for NO_X of 0.05 lbs/MMBtu. This limit is based on the installation of SCR on each of the units. The following steps outline how we came to this determination. For more detail, please see the TSD. Any BART determinations for other pollutants that may be warranted under the RHR will be addressed in future rulemakings.

a. The SJGS Is a BART-Eligible Source

The first step of a BART evaluation is to determine whether a source meets the definition of a "BART-eligible source" in 40 CFR 51.301. BART-eligible sources are those sources which have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. We find, based on emissions reported by our Clean Air Markets Division,[17] that units 1, 2, 3, and 4 of the SJGS each have historically emitted much more than 250 tons of NO_X. Also, according to the NMED SJGS Title V Statement of Basis, units 1, 2, 3, and 4 of the SJGS meet the requirement of being "in existence" on August 7, 1977 but not "in operation" before August 7, 1962. Lastly, we find that units 1, 2, 3, and 4 of the SJGS fall under category 1 of the 26 listed BART categories, which is fossil-fuel fired steam electric plants of more than 250 million British thermal units (BTU) per hour heat input. Therefore, we propose to find that units 1, 2, 3, and 4 of the SJGS are BART-eligible.

b. The SJGS Is Subject to BART

Section III of the BART Guidelines outlines several approaches for identifying sources that are subject to BART. This entails making a determination of whether the units of the SJGS cause or contribute to visibility impairment in nearby Class I areas. Among the options we recommended was the use of dispersion modeling for assessing the impacts of a single source. As we note in the BART Guidelines, one of the first steps in this approach to determining whether a source causes or contributes to visibility impairment is to establish a threshold (measured in deciviews). A single source that is responsible for a 1.0 deciview change or more should be considered to "cause" visibility impairment; a source that causes less than a 1.0 deciview change may still contribute to visibility impairment and thus be subject to BART. We note in the BART Guidelines that states (and by extension EPA when promulgating a FIP) have flexibility in determining an appropriate threshold for determining whether a source "contributes to any visibility impairment" for the purposes of BART. However, this threshold should not be higher than 0.5 deciviews.[18] In the case of the SJGS, this establishment of a precise threshold for contribution is moot, since visibility modeling indicates that even using the upper bound contribution threshold of 0.5 deciviews, the SJGS contributes to

[15] *http://camddataandmaps.epa.gov/gdm/index.cfm.*

[16] New Mexico Environment Department, Air Quality Bureau, BART Determination, Public Service Company of New Mexico, San Juan Generating Station, Units 1–4, June 21, 2010, *available* at *http://www.nmenv.state.nm.us/aqb/reghaz/documents/AppxA_NM_SJGS_NOxBART Determination_06212010.pdf.*

[17] *http://camddataandmaps.epa.gov/gdm/index.cfm.*

[18] 40 FR 39161 (July 6, 2005).

visibility impairment at a number of Class I areas.

The WRAP performed the initial BART screening modeling for the state of New Mexico. The procedures used are outlined in the WRAP Regional Modeling Center (RMC) BART Modeling Protocol.[19] The WRAP screening modeling evaluated sources that were identified as BART-eligible and determined the only sources that did not screen out were the SJGS units. The results of this analysis indicated that SJGS, on a facility-wide basis, causes visibility impairment at all 16 Class I areas within 300 km of the facility. However, this modeling was based on the installed control technology at the time and does not reflect emission reductions due to the installation of consent decree controls. Revised modeling performed by NMED and by us, including controls required by the consent decree and currently installed, further confirmed that SJGS still "causes" visibility impairment at more than half of the Class I areas in the vicinity of the facility and contributes (above 0.5 deciviews) to visibility impairment at the remaining areas on a facility-wide basis. On an individual unit basis, all units "cause" visibility impairment at Mesa Verde National Park, and cause or contribute to visibility impairment at a number of other Class I areas. Our modeling indicates that the visibility impairment is primarily dominated by nitrate particulates. Therefore, as the WRAP screening modeling has previously concluded and further New Mexico and our modeling confirms that even with post-consent decree control levels on SJGS units, the SJGS units 1, 2, 3, and 4 still have a significant impact at surrounding Class I areas. Consequently, we propose to find that units 1, 2, 3, and 4 of the SJGS are subject to BART. More details on this determination can be found in the TSD.

c. The SJGS NO_X BART Determination

Having established that units 1, 2, 3, and 4 of the SJGS are subject to BART, the next requirement is to perform the BART Analysis. 40 CFR 51.308(e)(1)(ii); *see also* BART Guidelines, Section IV. The BART analysis identifies the best system of continuous emission reduction and, as laid out in the BART Guidelines, consists of the following five basic steps:

- Step 1: Identify All Available Retrofit Control Technologies;
- Step 2: Eliminate Technically Infeasible Options;
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies;
- Step 4: Evaluate Impacts and Document the Results; and
- Step 5: Evaluate Visibility Impacts.

As we stated above, for our BART analysis we have heavily drawn upon the NMED BART Evaluation. Except for the following points, we agree with NMED's conclusions regarding Steps 1–5:

- PNM's cost estimate. NMED questioned PNM's cost estimate for the installation of SCR but accepted it as being cost effective. We too questioned PNM's cost estimate for SCR, and hired a consultant to undertake an accurate assessment of the cost of SCR and the emission limits that SCR is capable of attaining. (For more information, please see the TSD).
- BART for NO_X. NMED evaluated the visibility benefits of SCR at the SJGS based on an emission limit of 0.07 lbs/MMBtu, but noted the potential for greater control at rates as low as 0.03 lbs/MMBtu. As discussed further below, we have concluded that a NO_X emission limit of 0.05 lbs/MMBtu is BART for the SJGS, and performed our visibility modeling on that basis. (Additional information is provided in the TSD).
- SO_2 to SO_3 Conversion. NMED concluded BART for the SJGS was SCR plus sorbent injection to remove sulfur trioxide (SO_3) in the flue gas by reaction with an alkaline material. As discussed further below, we have concluded that sorbent injection is not necessary, as the SJGS burns a low sulfur coal, and catalysts are available with a low SO_2 to SO_3 conversion rate. (Please see the TSD for further information).

The following is a summary of our BART analysis. In general, our analysis is the same as NMED's analysis of Steps 1–5, as modified to incorporate the areas discussed above in which we differ with NMED.

i. Identification of All Available Retrofit Emission Control Technologies

To address step 1, NMED reviewed a number of potential retrofittable NO_X control technologies, including: Selective Non Catalytic Reduction (SNCR), SCR, SNCR/SCR Hybrid, Natural Gas Reburn, Nalco Mobotec ROFA and Rotamix, NOxStar, ECOTUBE, PowerSpan ECO, Phenix Clean Combustion, and e-SCRUB. We drew upon PNM's June, 2007 BART submission to NMED and its subsequent revisions in our evaluation, and agree that the potential technologies for NO_X controls that have been identified.

ii. Elimination of Technically Infeasible Options

For step 2, again drawing upon the NMED analysis, we have determined the following potentially retrofittable NO_X control technologies are not technically feasible, or have not been thoroughly demonstrated on similar size and type units: Natural Gas Reburn, NOxStar, ECOTUBE, PowerSpan ECO, Phenix Clean Combustion, and e-SCRUB. In determining BART, we have considered the remaining technologies, SCR, SNCR, SNCR/SCR Hybrid, and the Nalco Mobotec ROFA and Rotamix to be technically feasible.

iii. Evaluation of Control Effectiveness of Remaining Control Technologies

Step 3 involves evaluating the control effectiveness of all the technically feasible control alternatives identified in Step 2. Two key issues in this process include: (1) Ensuring the degree of control is expressed using a metric that ensures a level comparison of emissions performance levels among options; and (2) giving appropriate treatment and consideration of control techniques that can operate over a wide range of emission performance levels. With the exception of SCR, Table 1 represents the control efficiencies and control emission rates PNM reported as part of its BART analyses [20] to NMED for the NO_X controls that were found to be technically feasible. In our own SCR cost analysis, which we present later in this section, we have revised the control efficiency for SCR from 0.07 lbs/MMBtu to 0.05 lbs/MMBtu.

[19] "CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States", Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006, *available* at *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[20] Public Service Company of New Mexico, San Juan Generating Station, Best Available Retrofit Technology Analysis, June 6, 2007.

PNM San Juan Generating Station, BART Analysis of SNCR, May 30, 2008.

PNM San Juan Generating Station, BART Analysis of Nalco Mobotec NO_X Control Technologies, August 29, 2008.

TABLE 1—PROJECTED NO_X CONTROL EFFECTIVENESS FOR UNITS 1–4

Control technology	Control efficiency (%)	Controlled emission rate (lb/MMbtu)
ROFA	13–15	0.26
Rotamix (SNCR)	23–25	0.23
ROFA/Rotamix	33–35	0.20
SCR/SNCR Hybrid	40–41	0.18
SCR	77	0.07

iv. Evaluation of Impacts and Documentation of Results

Under step 4 of the BART determination process, we conducted the following analysis of the possible impacts due to the installation of the technically feasible NO_X control options:

- Costs of Compliance.
- Energy Impacts.
- Non-Air Quality Environmental Impacts.
- Remaining Useful Life.

When performing BART analyses on each of the technically feasible NO_X control options, PNM considered the energy impacts, non-air quality environmental impacts, and the remaining useful life. PNM accounted for the additional cost of certain energy impacts in the cost impacts analysis. It did not note any other energy impacts as being significant. With regard to non-air quality environmental impacts, PNM did not identify any significant or unusual environmental impacts associated with the control alternatives that had the potential to affect the selection or elimination of that control alternative. For SCR and SCR/SNCR Hybrid technologies, the non-air quality environmental impacts included the consideration of water usage and waste generated from each control technology. Lastly, the remaining useful life was defined by PNM as 20 years. Therefore, no additional cost adjustments for a short remaining useful boiler life were claimed by PNM.

PNM calculated the costs of each of the technically feasible NO_X control options [21]. This information was assessed by NMED in its BART analysis. We checked that information and present it below in Tables 2–5 (with a few minor corrections). It summarizes our evaluation of the impacts of the BART analyses, including updated cost data for the SCR option:

TABLE 2—IMPACT ANALYSIS AND COST EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES FOR UNIT 1

Control technology	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_X reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
SCR + sorbent	0.07	966	3,174	164,732	21,998	6,931	3,815	1,569	[1] NA
SNCR/SCR Hybrid	0.18	2,484	1,656	104,436	16,207	9,787	34,221	706	1,762
ROFA/Rotamix	0.20	2,760	1,380	29	6,762	4,900	7,766	1,413	3
Rotamix (SNCR)	0.23	3,174	966	11,306	3,547	3,672	222	51	4
ROFA	0.26	3,588	552	18,293	3,455	6,259	−2,896	1,363	[1] NA
Consent Decree	0.30	4,140	1,254	14,580	1,422	1,134	NA	[1] NA	[1] NA

TABLE 3—IMPACT ANALYSIS AND COST EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES FOR UNIT 2

Control technology	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_X reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectivness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
SCR + sorbent	0.07	961	3,158	177,178	23,364	7,399	4,432	1,565	[1] NA
SNCR/SCR Hybrid	0.18	2,471	1,648	108,628	16,670	10,118	36,082	346	1,762
ROFA/Rotamix	0.20	2,746	1,373	29,350	6,762	4,925	7,805	1,413	3
Rotamix (SNCR)	0.23	3,158	961	11,306	3,547	3,691	223	51	4
ROFA	0.26	3,570	549	18,293	3,455	6,291	−1,375	1,363	[1] NA
Consent Decree	0.30	4,119	2,060	14,126	1,378	669	NA	[1] NA	[1] NA

TABLE 4—IMPACT ANALYSIS AND COST EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES FOR UNIT 3

Control technology	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_3 reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
SCR + sorbent	0.07	1,501	4,930	227,774	30,527	6,192	2,087	2,267	[1] NA

[21] Tables 2–5 were constructed to incorporate costs due to sorbent injection, as a means of SO_3 control in conjunction with SCR. This was done by PNM in response to a request by NMED. As NMED notes in its BART analysis, it understands there are SCR catalysts now on the market that are capable of a much smaller SO_2 to SO_3 conversion. In our own analysis, we have concurred with this finding and hence do not consider sorbent injection.

TABLE 4—IMPACT ANALYSIS AND COST EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES FOR UNIT 3—Continued

Control technology	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_3 reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
SNCR/SCR Hybrid ..	0.18	3,859	2,572	168,507	25,606	9,954	37,221	507	2,658
ROFA/Rotamix	0.20	4,287	2,144	34,070	9,648	4,501	7,338	2,810	5
Rotamix (SNCR)	0.23	4,930	1,501	13,316	4,929	3,285	−303	84	5
ROFA	0.26	5,574	857	20,983	5,124	5,976	−2,264	2,725	[1] NA
Consent Decree	0.30	6,431	2,573	12,715	1,240	482	NA	[1] NA	[1] NA

TABLE 5—IMPACT ANALYSIS AND COST EFFECTIVENESS OF NO_X CONTROL TECHNOLOGIES FOR UNIT 4

Control technology	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_X reduction (tpy)	Total capital investment (TCI) (1,000$)	Total annualized cost (TAC) (1,000$)	Cost effectiveness ($/ton)	Incremental cost effectiveness ($/ton)	Energy impacts (1,000$)	Non-air impacts (1,000$)
SCR + sorbent	0.07	1,472	4,837	211,764	28,760	5,946	1,691	2,288	[1] NA
SNCR/SCR Hybrid ..	0.18	3,785	2,524	161,572	24,849	9,847	36,141	507	2,658
ROFA/Rotamix	0.20	4,206	2,103	34,070	9,648	4,588	7,480	2,810	5
Rotamix (SNCR)	0.23	4,837	1,472	13,316	4,929	3,348	−309	84	5
ROFA	0.26	5,468	841	20,983	5,124	6,091	−2,299	2,275	[1] NA
Consent Decree	0.30	6,309	2,524	12,870	1,256	498	NA	[1] NA	[1] NA

[1] PNM performed an impact analysis for these technologies and incorporated any monetized energy or non-air environmental impacts into the cost analysis

We find that the energy impacts, non-air quality environmental impacts, and the remaining useful life do not present sufficient reason to disqualify any of the technically feasible NO_X control technologies.

v. Evaluation of Visibility Impacts and Cost Analysis

Under step 5 of the BART Guidelines, we evaluate the visibility improvement for each feasible control technology. NMED modeled [22] the visibility benefits of each of the NO_X control technologies listed in Tables 2–5, above, on 16 Class I areas. NMED used the CALPUFF modeling system, which consists of a meteorological data pre-processor (CALMET), an air dispersion model (CALPUFF), and post-processor programs (POSTUTIL, CALSUM, CALPOST). The CALPUFF modeling system is the recommended model for conducting BART visibility analysis. First, the model was run using the pre-BART, consent decree conditions to establish a baseline. The model was then run for each of the control technologies identified for each unit during the BART engineering analysis. These visibility impacts were then compared to the baseline to evaluate the visibility benefit of each control. NMED modeled the visibility impacts of each of the control scenarios individually for each of the SJGS units, as well as calculated visibility impacts on a facility-wide basis. The NMED modeling used the original IMPROVE equation within CALPOST to estimate visibility impairment from the modeled pollutant concentrations. Table 6, below, summarizes the results of the latter exercise, for the maximum impacts of the 98th percentile delta-dv impacts from 2001–2003.

All of the WRAP and NMED refined modeling was conducted with the version of the CALPUFF system recommended by the WRAP BART modeling protocol [23] and followed the WRAP protocol for source-specific applications. As we note in the TSD, NMED and the WRAP utilized CALMET version 6.211 to create the necessary meteorological database for input into the CALPUFF model. Some technical concerns have been identified with this non-regulatory version of the model. The concerns are discussed in the technical support document. Our regulatory version of the model is CALMET 5.8, which we used in our modeling. Two pollutants must be given special consideration when estimating the impact of various control technologies on visibility improvement: Background ammonia (NH_3) and sulfuric acid (H_2SO_4) emissions. NMED utilized a variable monthly background NH_3 concentration rather than using the default recommended value. As discussed later, we utilized both approaches for background NH_3 in our modeling so as to be able to compare the results. For estimating H_2SO_4 emissions, NMED estimated the fraction of particulate matter (PM) emissions that are classified as inorganic condensable PM and assumed that 100% of this fraction is H_2SO_4. Additional H_2SO_4 due to SCR operation was calculated assuming 1% conversion of SO_2 to SO_3. As noted in the TSD and briefly described below, our approach to these two factors differed from the NMED approach. The results provided by NMED, and included in Table 6 below, demonstrate that SCR is by far the most advantageous approach to NO_X control. The differences in our and New Mexico's approaches should not change the relative advantage that SCR has over other control methods in improving visibility since these concerns are present in all the NMED modeling and would have similar impacts on the modeling results.

[22] NMED performed some modeling as well as reviewed modeling protocols and results supplied by PNM and prepared by the contractor Black & Veatch found in: Public Service Company of New Mexico BART Technology Analysis for the San Juan Generating Station (June 6, 2007 and submittal updates). When we say "NMED modeling" or "NMED modeled" we are referring to the modeling performed or reviewed by NMED.

[23] "CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States", Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. *available* at *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

TABLE 6—NMED MODELED MAXIMUM IMPACTS OF THE 98TH PERCENTILE DELTA-dv IMPACTS FROM 2001–2003

Class I area	Distance to SJGS (km)	Consent decree baseline	SCR + Sorbent	SCR/ SNCR Hybrid	ROFA/ Rotamix	Rotamix	ROFA
Arches	222	1.69	1.10	1.58	1.58	1.61	1.63
Bandelier Wilderness	210	1.56	0.80	1.33	1.28	1.35	1.41
Black Canyon of the Gunnison Wilderness	203	1.15	0.63	0.94	0.93	0.98	1.04
Canyonlands	170	2.26	1.59	2.17	2.10	2.13	2.17
Capitol Reef	232	1.81	1.08	1.64	1.55	1.62	1.68
Grand Canyon	285	0.97	0.53	0.80	0.79	0.84	0.88
Great Sand Dunes National Monument	269	0.71	0.40	0.64	0.60	0.61	0.65
La Garita Wilderness	169	0.94	0.45	0.78	0.74	0.79	0.83
Maroon Bells Snowmass Wilderness	271	0.56	0.28	0.48	0.47	0.50	0.52
Mesa Verde	40	3.80	2.46	4.42	3.58	3.58	3.59
Pecos Wilderness	248	1.09	0.66	0.90	0.88	0.92	0.97
Petrified Forest	213	0.82	0.48	0.73	0.73	0.77	0.78
San Pedro Parks Wilderness	155	2.01	1.13	1.80	1.67	1.77	1.86
West Elk Wilderness	216	0.91	0.43	0.73	0.71	0.76	0.80
Weminuche Wilderness	98	1.48	0.90	1.33	1.24	1.32	1.36
Wheeler Peak Wilderness	258	0.89	0.50	0.72	0.70	0.75	0.79
Total		22.65	13.42	20.99	19.55	20.30	20.96

We note NMED's modeling indicated there was little difference between the SCR/SNCR hybrid, ROFA/Rotamix, and ROFA NO_X control technologies. However, as Tables 2–5 indicate, there is a significant difference in the cost of those controls, with the SNCR/SCR hybrid being more than twice as expensive as the ROFA/Rotamix, and approximately five times as expensive as both the Rotamix (SNCR) and the ROFA options. None of these NO_X control technologies was capable of significantly improving the visibility at any of the 16 Class I areas; therefore, we did not further evaluate them. However, we note that SCR was capable of uniformly improving the visibility at all of the 16 Class I areas, but at a higher cost.

The costs of the controls in Tables 2–5, were calculated by PNM. Because we found the costs projected by PNM to be high in comparison to other SCR retrofits we have reviewed, we refined the cost of retrofitting the SJGS with SCR (see the TSD for more information), and the NO_X emission level SCR was capable of achieving when retrofitted to the SJGS. This analysis indicated that the cost of SCR at this source would be considerably lower than calculated by PNM. We believe that PNM overestimated the cost of SCR due to several basic errors that PNM made in constructing its SCR cost analysis:

- PNM did not follow the EPA Air Pollution Control Cost Manual, where possible,[24] as directed by the BART Guidelines.[25]
- PNM scaled many of the cost items from another project that has significant design differences when compared to the SJGS. We made changes in many of these items to adjust them from budgetary to final contract; to exclude equipment and modifications not required for the SJGS SCR installations; to correct errors; and to factor out installation, freight, and other costs that were included in the contract awards and double counted elsewhere in PNM's cost estimate. We have concluded that these adjustments are correct, and provide a more accurate estimate of the costs at SJGS.
- PNM performed their SCR cost estimate on the basis of a NO_X control rate of 0.07 lbs/MMBtu. We concluded that SCR could reliably achieve NO_X control at a rate of 0.05 lbs/MMBtu on a 30-day rolling average basis, for each of the four units of the SJGS. Because this did not require a change in the capital cost of the SCR unit, and only necessitated the purchase of additional reagent, this had the effect of improving the cost effectiveness. We have concluded that the analysis concerning the achievability of the emissions limit, and the cost of achieving those limits, is more accurate.

The results of that analysis are presented as Table 7:

TABLE 7—EPA DETERMINED COST EFFECTIVENESS OF SCR FOR THE SJGS

Unit	Emission limit (lbs/MMBtu)	NO_X emissions (tpy)	NO_X reduction (tpy)	Total capital investment	Total annualized cost	Cost effectiveness ($/ton)
1	0.05	690	3,450	$53,230,469	$6,373,573	1,847
2	0.05	686	3,433	55,664,049	6,591,720	1,920
3	0.05	1,071	5,360	70,464,306	8,631,234	1,610
4	0.05	1,051	5,258	67,223,223	8,304,143	1,579

[24] U.S. EPA, EPA Air Pollution Control Cost Manual, Report EPA/452/B–02–001, 6th Ed., January 2002 ("Cost Manual"), The EPA Air Pollution Control Cost Manual is the current name for what was previously known as the OAQPS Control Cost Manual, the name for the Cost Manual in previous (pre-2002) editions of the Cost Manual.

[25] In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible. 70 FR 39104, 39166 (2005).

Based on our refined cost and control effectiveness analysis, we conclude that SCR is cost effective for all units of the SJGS.

Although we generally regard the visibility modeling analyses performed by NMED to be of high quality, we noted some minor issues we wished to rectify in order to address consistency with modeling guidance we have provided to the states. We remodeled the visibility impacts of the SJGS using revised emission estimates and meteorology results from the regulatory version of the CALPUFF and CALMET models. As detailed in the TSD, we utilized a different approach based on the best current information from the Electric Power Research Institute (EPRI) [26] to estimate the sulfuric acid released from combustion in the boiler for all scenarios and for operation of the SCR, assuming a 0.5% SO_2 to SO_3 conversion efficiency [27] of the SCR catalyst (compared to a 1% conversion assumed by NMED). We determined that the SCR could achieve an emission rate of 0.05 lb NO_X/MMBtu and included this emission rate in modeling the SCR control scenario (compared to 0.07 lb NO_X/MMBtu assumed by NMED). We modeled a revised baseline with the SO_2 emissions lowered to the BART presumptive limit of 0.15 lb/MMBtu that was assumed by the WRAP for regional photochemical visibility modeling to demonstrate reasonable progress towards natural visibility conditions. Finally, modeling was performed utilizing both the monthly variable background NH_3 concentration used by NMED and the default background NH_3 concentration of 1.0 ppb to evaluate the sensitivity of the results to these assumptions. Visibility impairment from our modeled pollutant concentrations were calculated using both the original IMPROVE equation (Method 6) used by NMED and the revised IMPROVE equation (Method 8) to calculate visibility impairment from the modeled pollutant concentrations.

As Table 8 indicates, in considering the visibility impacts associated with the use of SCR, we focused on the 98th percentile of modeled results to avoid giving undue weight to any extreme results.[28] The results are presented as the visibility impacts from SJGS and the associated changes in visibility at each Class I area within 300 kilometers of the facility resulting from the use of SCR. These results employ our revised baseline, a 1 ppb background NH_3 concentration assumption, our revised SO_2 to SO_3 conversion calculation, and the new IMPROVE equation (Method 8). The other methods that we utilized in our sensitivity modeling approaches using Method 6 and/or the variable NH_3 are documented in the TSD.

TABLE 8—EPA MODELED MAXIMUM IMPACTS OF THE 98TH PERCENTILE DELTA-dv IMPACTS FROM 2001–2003

Class I area	Distance to SJGS (km)	Baseline visibility impact (Δdv)	Visibility impact with SCR (Δdv)	Visibility improvement with SCR (Δdv)
Arches	222	3.50	1.12	2.38
Bandelier Wilderness	210	1.39	0.48	0.91
Black Canyon of the Gunnison Wilderness	203	1.41	0.42	0.99
Canyonlands	170	4.64	1.53	3.11
Capitol Reef	232	2.38	0.82	1.56
Grand Canyon	285	0.93	0.33	0.60
Great Sand Dunes National Monument	269	1.53	0.49	1.04
La Garita Wilderness	169	1.93	0.57	1.36
Maroon Bells Snowmass Wilderness	271	0.70	0.28	0.42
Mesa Verde	40	5.15	2.27	2.88
Pecos Wilderness	248	1.27	0.47	0.80
Petrified Forest	213	0.52	0.21	0.31
San Pedro Parks Wilderness	155	2.20	0.74	1.46
West Elk Wilderness	216	1.59	0.45	1.14
Weminuche Wilderness	98	2.92	0.87	2.05
Wheeler Peak Wilderness	258	1.12	0.44	0.68
Total Delta dv	.....	33.18	11.48	21.69

As can be seen from Table 8, our visibility modeling indicates that SCR NO_X control offers visibility improvement at every one of the 16 Class I areas and significant visibility improvement at the overwhelming majority of areas. Therefore, after having identified all available retrofittable NO_X control technologies, eliminated those that were not technically feasible, evaluated the NO_X control effectiveness of those remaining, evaluated the impacts and having documented the results, we propose that NO_X BART for all the units of the SJGS is SCR with a 30 day rolling average of 0.05 lbs/MMBtu.

In addition, our visibility analysis relied in part on estimates of H_2SO_4 mist emissions. The amount of H_2SO_4 emissions depends, in part, on proper design and operation of the SCR unit. Therefore, we believe it is appropriate to set emission limits for H_2SO_4. We believe that our estimates of these emissions are appropriate based on the use of low reactivity catalyst that will reduce the rate of SO_2 to SO_3 conversion. To ensure these levels are met, we are proposing that emissions of H_2SO_4 be limited to 1.06×10^{-4} lb/MMBtu for each unit. These emission limits are based on the most current information from the Electric Power Research Institute (EPRI), information on the sulfur content of the coal, and assuming a maximum of 0.5% SO_2 to SO_3 conversion efficiency of the SCR catalyst. We note that there is some potential variation in the methodologies

[26] Electric Power Research Institute, Estimating Total Sulfuric Acid Emissions from Stationary Power Plants, 1016384 Technical Update, March 2008.

[27] Emails between Anita Lee, EPA Region 9 and Anthony C. Favale P.E., Director—SCR Products, Hitachi Power Systems America, Ltd. Favale: "Catalyst development has progressed over the last few years to the point that an initial SO_2 conversion rate of 0.5% can be guaranteed with 80 to 90% NO_X reduction."

[28] *See* 70 FR at 39,121.

and the assumptions used method for calculating H_2SO_4 emissions. The assumptions associated with our calculation are discussed further in the TSD. We are soliciting comment on setting the emission limit in the range between our proposed limit of 1.06 x 10^{-4} lb/MMBtu and an upper range of sulfuric acid mist emissions of 7.87 x 10^{-4} lb/MMBtu.[29] Comments on our proposed H_2SO_4 limit and alternative limits should include consideration of the use of a low conversion rate SCR catalyst and be sufficiently justified.

As there are no continuous emission monitoring techniques for H_2SO_4 mist, we are proposing that compliance be based on an hourly average, confirmed by annual stack testing using EPA Test Method 8A (CTM–013).[30] We note that our proposed limits challenge the detection limits of the test method. We solicit comment on this issue, including suggestions for test methods that will better measure these low concentrations and other approaches to determine continuous compliance.

Similarly, our visibility analysis also relied in part on estimates of ammonia (NH_3) slip, emissions of NH_3 that pass through the SCR. NH_3 contribute to visibility impairment. Limiting NH_3 emissions depends on proper design and operation of the SCR. Therefore, we are proposing to set a limit to minimize the contribution of NH_3 to visibility impairment. We are proposing that emissions of NH_3 be limited to 2.0 parts per million volume dry (ppmvd), adjusted to 6 percent oxygen for each of the four SJGS units.[31] We are also soliciting comment on setting this limit in the range of 2–6 ppmvd, adjusted to 6 percent oxygen. Comments on our proposed limit and alternative limits should consider visibility impairment. Compliance will be based on an hourly average confirmed by an initial performance test using EPA Conditional Test Method 27 (40 CFR 51, Appendix M). We are also proposing that a CEM for NH_3 be installed and operated. We solicit comment on other approaches to determine continuous compliance.

As we note above in section II.B.3, the RHR requires that BART controls must be installed and in operation as expeditiously as practicable, but no later than five (5) years after the date of our approval of the RH SIP. 40 CFR 51.308(e)(1)(iv). Based on the retrofit of other SCR installations we have reviewed, we find that three (3) years from the date our final determination becomes effective is a conservative and adequate estimate of time for the planning, engineering, installation, and start-up of these controls.[32] Many installations have been completed in much shorter times.[33] We solicit comment on alternative timeframes, up to five (5) years from the date our final determination becomes effective.

IV. Proposed Action

We are proposing to disapprove a portion of the SIP revision submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. We are proposing to disapprove the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. As a result of the proposed disapproval, we are also proposing a FIP to address the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility. With regard to whether emissions from New Mexico sources interfere with the visibility programs of other states, we are proposing to find that New Mexico sources, except the SJGS, are sufficiently controlled to eliminate interference with the visibility programs of other states, and for the SJGS source we are proposing to impose specific SO_2 and NO_X emissions limits that will eliminate such interstate interference. In addition, EPA is proposing the FIP to address the requirement for BART for NO_X for the SJGS.

Based on our evaluation we are proposing to find that the SJGS is subject to BART under section 40 CFR 51.309(d)(4), and/or 51.308(e). Our proposed NO_X controls for SJGS will partially address the BART requirements of the RH program. Specifically, we are proposing a FIP that imposes NO_X BART limits for the SJGS. Together, the reduction in NO_X from our proposed NO_X BART determination, and the proposed SO_2 emission limits will serve to ensure there are enforceable mechanisms in place to prevent New Mexico NO_X and SO_2 emissions from interfering with efforts to protect visibility in other states pursuant to the requirements of section 110(a)(2)(D)(i)(II) of the CAA.

For NO_X emissions, we are proposing to require the SJGS to meet an emission limit of 0.05 pounds per million British Thermal Units (lb/MMBtu) individually at Units 1, 2, 3, and 4. This NO_X limit is achievable by installing and operating SCR. For SO_2, we are proposing to require the SJGS to meet an emission limit of 0.15 lb/MMBtu. Both of these emission limits would be measured on the basis of a 30 day rolling average. We are also proposing hourly average emission limits of 1.06 x 10^{-4} lb/MMBtu for H_2SO_4 and 2.0 ppmvd, for NH_3, to minimize the contribution of these compounds to visibility impairment. Additionally, we are proposing monitoring, recordkeeping and reporting requirements to ensure compliance with emission limitations.

We also propose that compliance with the emission limits be within three (3) years of the effective date of our final rule. We solicit comments on alternative timeframes, up to five (5) years from the effective date our final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866, (58 FR 51735, October 4, 1993), and is therefore not subject to review under the Executive Order. This action proposes a source-specific FIP for the San Juan Power Generating Station (SJGS) in New Mexico.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a "collection of information" is defined as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to a single facility, (SJGS), the Paperwork

[29] Upper range value is based on information from PNM's Toxics Release Inventory report and previous PNM calculations of the amount of additional H_2SO_4 from the installation and operation of SCR. For details on the derivation of this upper bound value, see the TSD.

[30] *http://www.epa.gov/ttn/emc/ctm/ctm-013.pdf.*

[31] PNM materials previously indicated that a 2 ppm ammonia slip limit would be appropriate for SCR at the Public Service Company of New Mexico Black and Veatch report titled: "San Juan Generating Station Best Available Retrofit Technology Analysis" Issue Date and Revision June 6, 2007, Final; Appendix B, page B–3.

[32] Typical Installation Timelines for NOx Emissions Control Technologies on Industrial Sources, Institute of Clean Air Companies, December 4, 2006, *available* at *http://www.icac.7 com/files/public/ICAC_NOx_Control_Installation_ Timing_120406.pdf*; *see also* Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073, October 2002, *available* at *http://www.epa.gov/clearskies/pdfs/ multi102902.pdf.*

[33] *Id.*

Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP for SJGS being proposed today does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted to inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action to address the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility. 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 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 will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it limits emissions of pollutants from an existing single stationary source. Because this proposed action only applies to a single existing source and is not a proposed rule of general applicability, it is not

economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the rule will limit emissions of NO_X and SO_2 the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule would require all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

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, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule limits emissions of pollutants from a single stationary source, SJGS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: December 20, 2010.

Samuel J. Coleman,

Acting Regional Administrator, Region 6.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

2. Add § 52.1628 to read as follows:

§ 52.1628 Interstate pollutant transport and regional haze provisions; What are the FIP requirements for San Juan Generating Station emissions affecting visibility?

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, or 4 at the San Juan Generating Station in San Juan County, New Mexico (the plant).

(b) *Compliance dates.* Compliance with the requirements of this section is required upon the effective date of this rule unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in parts 51 and 60 of this chapter. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises the plant or any of the coal burning equipment designated as Units 1, 2, 3, or 4 at the plant.

Oxides of nitrogen (NO_X) means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR part 60.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

(d) *Emissions limitations and control measures.* (1) Within 180 days of the effective date of this paragraph (d), the owner or operator shall submit a plan to the Regional Administrator that identifies the air pollution control equipment and schedule for complying with paragraph (d) of this section. The owner or operator shall submit amendments to the plan to the Regional Administrator as changes occur. The NO_X and SO_2 limits shall be effective no later than 3 years after the effective date of this rule. No owner or operator shall discharge or cause the discharge of NO_X or SO_2 into the atmosphere from Units 1, 2, 3 and 4 in excess of the limits for these pollutants.

(2) *NO_X emission limit.* The NO_X limit for each unit in the plant, expressed as nitrogen dioxide (NO_2), shall be 0.05 pounds per million British thermal

units (lb/MMBtu) as averaged over a rolling 30 calendar day period. For each unit, NO_X emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of NO_X. For each unit, heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each day the thirty-day rolling average for a unit shall be determined by adding together the pounds of NO_X from that day and the preceding 29 days and dividing the total pounds of NO_X by the sum of the heat input during the same 30-day period. The result shall be the 30-day rolling average in terms of lb/MMBtu emissions of NO_X. If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30-day rolling average for NO_X.

(3) *SO_2 emission limit.* The sulfur dioxide emission limit for each unit shall be 0.15 lb/MMBtu as averaged over a rolling 30-calendar-day period. For each unit, SO_2 emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of sulfur dioxide. For each unit, heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each day the thirty-day rolling average shall be determined by adding together pounds of sulfur dioxide from that day and the preceding 29 days and dividing the total pounds of sulfur dioxide by the sum of the heat input during the same 30-day period. The results shall be the 30-day rolling average for lb/MMBtu emissions of SO_2. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO2 pounds per hour shall not be used in the calculation of the 30-day rolling average for SO_2.

(4) H_2SO_4 emission limit: Emissions of H_2SO_4 from each unit shall be limited to 1.06×10^{-4} lb/MMBtu on an hourly basis.

(5) Ammonia emission limit: Emissions of ammonia (NH_3) from each unit will be limited to 2.0 parts per million by volume, dry (ppmvd), adjusted to 6 percent oxygen, on an hourly average basis.

(e) *Testing and monitoring.* (1) On and after the effective date of this regulation, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_X, SO_2, and NH_3 on Units 1, 2, 3, and 4 in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for NO_X, SO_2 and NH_3 shall be determined by using data from a CEMS.

(2) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2, NO_X, NH_3 and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 pounds per hour, NO_X pounds per hour, SO_2 pounds per million Btu emission data, NO_X pounds per million Btu emission data, or NH_3 ppmvd data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(3) Emissions of H_2SO_4 shall be measured within 180 days of start up of the NO_X control device and annually thereafter using EPA Test Method 8A (CTM–013).

(4) Emissions of ammonia shall be measured within 180 days of startup of the NO_X control device using EPA Conditional Test Method 27.

(5) The facility shall install, calibrate, maintain, and operate a CEMS to measure and record the concentrations of NH_3.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6PD, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(2) For each day, provide the total NO_X and SO_2 emitted that day by each emission unit. For any hours on any unit where data for hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(g) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the Plant.

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(2) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

[FR Doc. 2010–33106 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2007–0406; FRL–9247–9]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Idaho State Implementation Plan (SIP) that were submitted to EPA by the State of Idaho on April 16, 2007. This SIP submittal includes new and revised rules which provide the Idaho Department of Environmental Quality (IDEQ) the regulatory authority to address regional haze and to implement Best Available Retrofit Technology (BART) requirements. The rule revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is also taking action on several other visibility-related rule revisions included in the submittal which are not specifically related to regional haze or BART requirements. One revision related to open burning is not being addressed in this action because it was superseded by a subsequent SIP revision on May 28, 2008, which was approved in a separate rulemaking on August 1, 2008. Other revisions related to permitting are not being addressed in this action because they were superseded by subsequent SIP revisions on May 12, 2008, and June 8, 2009, which were approved in a separate rulemaking on November 26, 2010.

DATES: Comments must be received on or before February 4, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2007–0406, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: R10-Public_Comments@epa.gov*.
- *Mail:* Steve Body, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2007–0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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, is not placed on the Internet and 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 during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, e-mail address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Purpose of Proposed Action

The purpose of this action is to propose approval of revisions to Idaho's SIP that were submitted to EPA by the State of Idaho IDEQ on April 16, 2007. The SIP submittals revise and amend IDEQ's Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) currently in the Federally approved Idaho SIP (Code of Federal Regulations part 52, subpart N). This action will update the Federally approved SIP to reflect changes to IDAPA 58.01.01 that were made by IDEQ and reviewed and deemed approvable into the SIP. The proposed SIP revisions are explained in more detail below along with our evaluation of how these rules comply with the requirements for SIPs and the basis for our action.

II. Background for Proposed Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to meet requirements of the Act and EPA's actions regarding approval of those SIPs. With this action we propose to approve the SIP submittal related to regional haze, and specifically, BART. We are taking no action on some of the provisions of the April 16, 2007, submittal because they were superseded in a May 28, 2008, submittal which was subsequently approved in a separate rulemaking on August 1, 2008. 73 FR 44915. We are also proposing to take no action in this rulemaking on other SIP revisions related to permitting because they were superseded by a May 12, 2008, submittal which was subsequently approved in a separate rulemaking on November 26, 2010. 75 FR 72719.

III. Idaho SIP Revisions and EPA's Proposed Action

A. New and Revised Definitions

Idaho has made numerous revisions to its definition sections (Section 006 General Definitions and Section 007 Definitions for the Purposes of Sections 200 through 228 and 400 through 461). New definitions have been added for the new regional haze provisions, some

existing definitions related to visibility permitting have been revised for use in the regional haze provisions and relocated from Section 007 to Section 006, and numerous editorial changes have been made to conform to renumbered definitions and correct internal cross-references. Specifically:

New Definitions

Idaho has added several new definitions for the purposes of the new regional haze rules, specifically: Section 006.14 Bart-Eligible Source; Section 006.16 Best Available Retrofit Technology (BART); Section 006.28 Deciview; Section 006.43 Federally Enforceable; Section 006.59 Least Impaired Days; Section 006.65 Most Impaired Days; Section 006.67 Natural Conditions; Section 006.91 Regional Haze; and Section 006.125 Visibility in Any Mandatory Class I Area. These new definitions are consistent with the EPA definitions in 40 CFR 51.301. EPA proposes to approve these new definitions.

Existing Definitions With Revisions

The following currently-approved definitions have been revised, renumbered, and/or relocated to make them consistent with the new regional haze provisions: Section 006.04 Adverse Impact on Visibility (moved from 007.01 to 006.04 and clarified how it relates to integral vistas under 40 CFR 51.307); Section 006.41 Federal Class I Area (removed cross reference to Section 580); Section 006.42 Federal Land Manager (revised to make applicable only to Class I areas); Section 006.57 Integral Vista (moved from 007.07 to 006.57 and removed reference to 40 CFR 51.304(a)); Section 006.61 Mandatory Class I Federal Area (moved from 007.08 to 006.61 and replaced reference to 42 U.S.C. 7472(a) with a reference to 40 CFR 81.400 to 437); Section 006.81 Potential to Emit/Potential Emissions (removed language regarding capacity factor); and Section 006.124 Visibility Impairment (moved from 007.17 to 006.124 and added light extinction to the parenthetical list of examples of impairment).

Since Idaho has now adopted EPA's Prevention of Significant Deterioration (PSD) rules by reference in Section 205, including the definitions at 40 CFR 52.21(b), these definitions are no longer needed for the purposes of Sections 200 through 228. The revised definitions are consistent with the EPA definitions in 40 CFR 51.301. EPA proposes to approve these revised definitions.

Renumbered Definitions and Definitions With Cross-Reference Changes Only

The following currently-approved definitions have been renumbered and/or relocated without change or with changes only to internal cross-references: Section 006.62 Member of the Public (cross-reference correction); Section 006.63 Modification (cross-reference correction); Section 006.92 Regulated Air Pollutant (cross-reference correction); Section 006.99 Secondary Emissions (moved from 007.13 to 006.99 unchanged); Section 006.101 Significant (cross-reference correction); and Section 007.02 Baseline Actual Emissions (renumbered from 007.03 to 007.02 and cross-references in paragraphs a.iv and d corrected).

EPA proposes to approve the editorial changes to these existing approved definitions.

B. Regional Haze (including BART) Provisions

Idaho has adopted new sections 665 through 668 which provide the State with the authority to address regional haze in accordance with the requirements of the Act and EPA's regulations at 40 CFR 51.300 through 308. These include: Section 666 Reasonable Progress Goals, which is consistent with 40 CFR 51.308(d)(1); Section 667 Long-Term Strategy for Regional Haze, which is consistent with 40 CFR 51.308(d)(3); and Section 668 BART Requirement for Regional Haze, which is consistent with 40 CFR 51.308(e). EPA proposes to approve these new rules as providing authority for Idaho to adopt a regional haze plan. EPA is proposing action on the Idaho regional haze plan in a separate rulemaking.

In addition, Idaho has incorporated several Federal rules addressing visibility and Regional Haze at 58.01.01.107.03(a)(ii), and (c) Incorporation by Reference, specifically: 40 CFR part 51, subpart P, 40 CFR part 51, Appendix Y, and 40 CFR 51.301, 51.304(a), 51.307, and 51.308. This provision has been superseded by a more recent submittal (June 8, 2009) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

C. Other Visibility-Related Provisions

Section 204 Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas: Idaho has revised subsection 02, Additional Requirements, paragraph d. Effect on Visibility which is a requirement of a permit applicant for a permit to satisfactorily demonstrate to the IDEQ the effect on visibility of any Federal Class I area or integral vista is consistent with making reasonable progress toward the national visibility goal in 40 CFR 51.300(a). This provision has been superseded by a more recent submittal (May 12, 2008) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

Section 205 Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas: Idaho has revised subsection 02, Effects on Visibility. Effect on Visibility which is a requirement of a permit applicant for a permit to satisfactorily demonstrate to the IDEQ the effect on visibility of any Federal Class I area or integral vista is consistent with making reasonable progress toward the national visibility goal in 40 CFR 51.300(a). This provision has been superseded by a more recent submittal (May 12, 2008) which was approved by EPA in a separate rulemaking on November 26, 2010. 75 FR 72719.

58.01.01.600 Rules for Control of Open Burning: This revision adds language to indicate that the purpose of the open burning rules includes reducing the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy. This provision has been superseded by a subsequent revision and was addressed in a separate action. See 73 FR 44915 (August 1, 2008).

58.01.01.651 General Rules [for Control of Fugitive Dust]: This revision adds language requiring that proximity to a Class I area be considered when determining when reasonable precautions must be taken to prevent particulate matter from becoming airborne. We propose to approve this requirement as a SIP-strengthening rule change. This revision will allow Idaho to further control sources of fugitive dust when those sources impact air quality, including visibility, in Class I areas.

IV. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.[1] Therefore,

[1] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian

Continued

EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's SIP revisions, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

V. Statutory and Executive Order Reviews

Under the 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 state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 22, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

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BILLING CODE 6560–50–P

allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0001; FRL–9246–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the AT&SF Albuquerque Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) proposes to delete, from the National Priority List (NPL), 40 CFR part 300, appendix B, 62 acres of the AT&SF Albuquerque Superfund Site (Site). The Site is located in Albuquerque, Bernalillo County, New Mexico. After this deletion, this 62 acres will no longer be part of the Site and only the 27 acres making up the southern half of the Site will remain a listed Superfund Site (see the Environmental Protection Easement and Declaration of Restrictive Covenants in the docket). The only contaminated medium that was identified on the northern 62 acres of the Site was soil. This soil was remediated so that the concentration levels of hazardous substances that remain are consistent with future industrial or commercial use. This notice of intent for partial deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department (NMED), because EPA has determined that all appropriate response actions for this parcel under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: Comments must be received by February 4, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1994–0001, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail: coltrain.katrina@epa.gov.*
- *Fax:* 214–665–6660, Attention: Katrina Higgins-Coltrain.
- *Mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. 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–SFUND–1994–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://*

www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 at *http://www.regulations.gov* or in hard copy at:

- U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424;
- Albuquerque Public Library, Main Downtown Branch, 501 Copper Avenue, NW., Albuquerque, New Mexico 87102, Contact: John Vittal; and,
- New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Partial Site Deletion

I. Introduction

EPA Region 6 is publishing this notice of intent to delete the soil and ground water associated with the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site (Site) from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the 62-acre parcel of the AT&SF Albuquerque Superfund Site (EPA Site Identification number NMD980622864) is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments concerning its proposal for partial deletion for thirty (30) days from the date of publication in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the AT&SF Albuquerque Superfund Site and demonstrates how the northern 62-acre parcel meets the partial deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the northern 62-acre parcel of the Site:

(1) EPA consulted with the State of New Mexico, through the NMED, prior to developing this notice of intent for partial deletion.

(2) EPA has provided the state 30 working days for review of this notice prior to today's publication;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of New Mexico, through the NMED, concurred with the intent for partial deletion of the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site from the NPL by letter dated November 4, 2010;

(5) Concurrently with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in the major local newspaper, Albuquerque Journal. The newspaper notice announces the 30-day public comment period concerning the notice of intent for partial deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received on this document within the 30-day public comment period, EPA will evaluate and respond appropriately to the comments before making a final decision to partially delete the northern 62-acre parcel. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to partially delete the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site, the Regional Administrator will publish a

final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the Site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site from the NPL.

Site Background and History

The AT&SF Albuquerque Superfund Site (Site) is located at 3300 Second Street, SW., in the South Valley area of the City of Albuquerque, Bernalillo County, New Mexico. It is the location of the former The Atchison, Topeka and Santa Fe Railway Company Tie Treating Plant (facility) where creosote and other compounds were used in the wood preservation process. The Burlington Northern and Santa Fe Railway Company (BNSF Railway), a successor railroad corporation to the Atchison, Topeka and Santa Fe Railway Company (AT&SF) and a wholly owned subsidiary of the Burlington Northern Santa Fe Corp., is the owner of the Site. Although, the Site encompasses approximately 89 acres, the former treatment process area was primarily located on the southern 27-acre parcel, and the tie storage area was primarily located on the northern 62-acre parcel. A detailed map and coordinates of the northern 62-acre parcel (actual size is 62.6121 acres) is located in the deletion docket. The Site was proposed for inclusion on the EPA NPL October 14, 1992 [57 FR 47204] and made final on December 16, 1994 [59 FR 65212, 65221 (December 16, 1994)]. The EPA Site Identification number is NMD980622864.

The facility operated as a wood pressure treatment plant from March 1908 to January 1972. The facility primarily used creosote and creosote petroleum mixtures for the manufacture of pressure treated wood products, including railroad cross ties, bridge ties, switch ties, bridge timbers, road crossing materials, bridge piling materials, lumber, stock pen posts and fence posts. From 1914 through 1926, some materials were treated with zinc chloride, followed by a creosote-petroleum mixture. Additionally, documents from the 1950s and early 1960s refer to experiments and small scale projects performed using solutions containing 2% to 10% pentachlorophenol. In 1972, the plant was totally dismantled, and the only physical feature remaining on-site was the wastewater reservoir/wastewater sump.

The Site can be divided into five general areas of environmental impacts from the plant's former wood treating operations. The plant treatment process area covered approximately 27 acres of the facility and included four areas of environmental impact: The wood treatment area, the drip tracks, the wastewater reservoir, and the wastewater discharge ditch. The remaining area of environmental impact was the tie storage area which was located on the northern 62 acres. The northern 62 acres is the area proposed for partial deletion; therefore, the following discussion pertains to actions taken on the northern 62-acre parcel.

In 1996, three areas were excavated from the northern 62-acre tie storage area, and were backfilled with clean soil after confirmation testing.

In 1987, approximately 25 acres of the northern 62-acre tie storage area were redeveloped for industrial purposes by BNSF. This redevelopment occurred when an auto unloading facility, with an associated intermodal ramp for unloading and loading containers and trailers on railcars, was built. It is an active facility currently in operation. The northern 62-acre parcel also includes an estimated 17- to 20-acre parcel under consideration for purchase by an industrial concrete distribution company (company). BNSF and the company retain an open dialogue regarding the potential parcel sale and redevelopment.

Remedial Investigation and Feasibility Study (RI/FS)

The field investigation was considered a comprehensive approach that addressed the Site as one operable unit. From 1987 to 1999, five distinct phases of investigation were completed to define the extent of impact on soil and ground water. The field activities included sampling and characterization through geophysical surveys, hand auger, direct push, cone penetrometer, drill rig, ground water monitoring well installation (permanent and temporary), aquifer tests, and ground water modeling.

Ground Water Contamination

The CERCLA RI/FS for the Site was conducted under an Administrative Order on Consent entered between the EPA and AT&SF (now BNSF) in 1994. The RI/FS was completed by TRC Environmental Corporation in 2001 for BNSF and was approved by the EPA. Among the findings of the RI/FS was the fact that most of the organic contamination found at the Site occurs as a dense non-aqueous phase liquid (DNAPL) containing organic compounds that slowly dissolve into the ground water and preferentially adsorb to soil particles in the aquifer matrix. The RI report indicates that DNAPL is present in the subsurface as either "free phase" or "residual phase". The free phase is that portion of the DNAPL that can continue to migrate and sink into the aquifer, whereas the residual phase is that portion of the DNAPL that is trapped in pore spaces by capillary forces and cannot generally migrate as a separate liquid. Both occurrences of the DNAPL act as continuing sources of contamination to ground water. The RI estimated that there are between 59,300 and 70,000 gallons of DNAPL associated with the southern 27-acre plant treatment process area and adjacent southern property. No identified DNAPL sources or related ground water contamination were identified in the three ground water zones underlying the northern 62-acre parcel. Ground water contamination associated with the southern 27-acre parcel is not expected to impact the ground water underlying the northern 62-acre parcel due to current ground water flow in the east-southeast direction and the placement of institutional controls restricting ground water extraction within the northern 62-acre parcel.

Soil Contamination

As expected, the nature of contamination across the Site is fairly typical of a wood treating operation. These contaminants consist of polynuclear aromatic hydrocarbons. In addition, zinc contamination of the soil was identified in the process area. The RI estimated that the volume of contaminated soil was 5,600 cubic yards. Although the plant used pentachlorophenol in the 1960s, its use is not believed to be as significant as the use of other preservatives at the plant, as there have not been significant levels of associated 2,3,7,8-tetrachloro-dibenzo-para-dioxin (TCDD or dioxin)

detected in wastes present at the Site. As such, dioxin is not considered a contaminant of concern (COC) at this Site.

The northern 62-acre parcel was used as the tie storage area. This area was where the treated ties were stored and allowed to dry. Releases to this area would be restricted largely to drippings from treated products. Creosote drippings would accumulate at locations where ties were repeatedly stacked, but these accumulations may tend to dry out between loads. With the advent of vapor drying in 1953, the amount of drippings was reduced to some extent.

The tie storage area was investigated in two stages. However, prior to these stages, six shallow boreholes were hand augered to a depth of 18 inches and a composite sample was collected and analyzed for semivolatile organics and arsenic. This was followed by a grid investigation of this area in October 1994, which included an additional 24 locations.

Using a grid layout, 24 shallow hollow-stem auger boreholes were logged continuously to a depth of 5 feet. The first sample was collected from the first natural soil encountered below any fill material, usually at a depth of approximately 3 inches to 2 feet. If a clay or silt layer was encountered in the upper 2 feet of soil, a sample was collected from the top of this layer. Of the 24 sample locations, one sample was collected at each of 19 locations and two samples were collected at each of five locations. Results from the 24 sample locations were compared to the Agency for Toxic Substances and Disease Registry (ATSDR) health-based concentrations for creosote constituents considered by ATSDR to be a potential threat to public health if exceeded. Three locations were identified with concentrations of one or more creosote constituents above the ATSDR health-based concentration. These health-based concentrations were being used as the screening comparison criteria at the time of the 62-acre tie storage area investigation because the preliminary remediation goal (PRG) of 8 mg/kg benzo(a)pyrene (BAP) equivalent had not yet been derived. However, when the PRG was issued, the data from the 24 sample locations were reviewed and compared with the 8 mg/kg BAP equivalent PRG. This resulted in the identification of the same three areas of concern originally identified during the investigation. No additional sample locations exceeded the 8 mg/kg BAP equivalent PRG.

Based upon the results of this first stage, the three areas of concern underwent a second investigation in March 1995. Using the 8 mg/kg BAP equivalent PRG, the soil from areas with high concentrations of creosote constituents was excavated and stockpiled inside the southern 27-acre fenced area to be managed as part of the soil remediation in July 1996. Depths of excavation ranged from 2 to 7 feet, and confirmation samples did not identify exceedances of the PRG of 8 mg/kg BAP equivalent. The highest BAP equivalent reported for soil was 0.572 mg/kg, while the highest zinc concentration reported for soil was 55.6 mg/kg.

The removal of soil from the northern 62-acre tie storage area in 1996 was motivated by BNSF's plans to expand its auto unloading facility. The future land use for this area was anticipated to be industrial. BNSF expected that the available land would be developed into a railroad switching yard and an expansion to the intermodal facility used for unloading automobiles from railcars. However, these plans for construction are no longer considered viable by BNSF.

Selected Remedy

The Record of Decision (ROD) was signed on June 27, 2002. The principal threat and low-level threat wastes at the Site were to be addressed through in-situ solidification/stabilization and run-off/run-on management for soil; an aggressive performance-based approach for remediation of contaminated ground water consisting of ground water restoration through pump and treat and DNAPL source removal with hot spot treatment; and institutional controls. Based on RI data and subsequent ground water sampling, ground water contamination was not identified under the northern 62-acre parcel. Therefore, the only medium of concern for the northern 62-acre parcel was soil. As such, only the soil remedial action objectives and associated cleanup levels selected in the ROD are presented here. [The ROD was later amended through an Explanation of Significant Differences; however, these changes did not effect the northern 62-acre parcel and were specific to the southern 27-acre parcel.] The selected cleanup levels for soil are 7.8 mg/kg BAP equivalent based on an industrial/commercial use scenario and 200 mg/kg zinc based on an ecological scenario. The selected Remedial Action Objectives for soil included:

- Prevent the ground water from being impacted above the maximum contaminant levels through transport of COCs from the unsaturated zone.
- Prevent storm water runoff from areas that exceed any remediation goals.
- Prevent the inhalation, ingestion, and dermal contact of contaminated soils for future on-site commercial/industrial/utility workers exposed to the soil.
- Prevent contaminated soils from becoming airborne and leaving the Site as dust.
- Prevent ecological receptors from being adversely impacted by on-site contamination.

The selected remedial action (RA) would not result in the Site being available for unlimited use and unrestricted exposure because Site contaminants in the soil will only be addressed to levels protective of future industrial or commercial use. As specified in the ROD, five-year reviews as well as operation and maintenance and institutional controls (ICs) will be necessary for this RA, and will include both the 62- and 27-acre parcels.

On February 27, 2008, an Environmental Protection Easement and Declaration of Restrictive Covenants was filed by BNSF, after approval by EPA and NMED, and recorded by the County Clerk of Bernalillo County, New Mexico. These ICs run with the land and restrict the use or development of the Site property and the use or development of ground water on or underlying the property. Specifically, the ICs prevent any use or development that would threaten or damage remedial components on the Site, which would include potential damage to the cap or underlying in-situ solidified/stabilized contaminated soil. Further, at least 30 days prior to any development or property conveyance, the EPA and NMED shall be notified in writing. Further, any development within the 27-acre southern parcel of the Site requires prior EPA review and written approval of development, along with certification that remediation goals have been met. Regardless of any development or property conveyance, BNSF's obligations under the Consent Decree for Site cleanup remain in effect, and the Site, including both the 27- and 62-acre parcels, remains subject to inspections and five-year reviews.

In addition to the Environmental Protection Easement and Declaration of Restrictive Covenants, the New Mexico Office of the State Engineer instituted a temporary IC in the form of a moratorium on new permits for ground water wells within a 200-ft buffer zone of the currently identified ground water plume surface area while remedial action is being performed. This moratorium was filed on January 29, 2009, to protect human health and minimize interference with the ground water remediation activities taking place

on the adjacent 27-acre parcel until all ground water remediation goals have been met. This moratorium will remain enforceable until ground water remedial action goals associated with the southern 27-acre parcel are met.

Data collected during the RI, in conjunction with the excavation of soil from the three areas of concern within the northern 62-acre tie storage treatment area, indicate that the soil and ground water meet the cleanup levels established in the ROD. Although a PRG of 8 mg/kg BAP equivalent was used during the RI soil excavation, the RI data and subsequent confirmation sample results were compared with the ROD soil cleanup levels of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc to ensure that the RI soil excavation met the soil cleanup levels in the ROD. The highest BAP equivalent reported for soil was 0.572 mg/kg, while the highest zinc concentration reported for soil was 55.6 mg/kg. These confirmation soil data results meet the ROD cleanup levels. No ground water contamination exceeding the ROD ground water cleanup levels for the northern 62-acre parcel was identified.

Due to its proximity to the adjacent rail line, an estimated 17- to 20-acre parcel of the northern 62-acre parcel is being considered for purchase from BNSF by an industrial concrete distribution company (company). In support of the redevelopment potential and ongoing sales negotiations, the company completed a characterization study of the parcel of interest in 2006 that included both ground water and soil sampling. Ground water data collected from four monitoring wells did not identify ground water contamination areas of concern; however, soil data did identify areas of concern.

In response to the study's finding, BNSF conducted additional soil sampling and remediation activities in 2007. Soil data collected from the 17- to 20-acre parcel exceeded the soil cleanup levels identified in the ROD, and resulted in the excavation of soil and asphalt waste from the northern 62-acre parcel. The excavated material was stockpiled on the southern 27-acre fenced area for inclusion in the soil remediation action. Subsequent confirmation samples from excavated areas indicated that ROD soil cleanup levels were met. The highest BAP equivalent reported for soil was 7.4 mg/kg, and the highest zinc concentration reported for soil was 179 mg/kg.

Cleanup Goals

The quality assurance/quality control (QA/QC) program for the Site was conducted in accordance with the work plans prepared to implement the RI and the RA construction activities. The EPA, in conjunction with NMED, conducted regular oversight throughout the implementation of the RI and remedial activities. Also, EPA and NMED reviewed and commented on all project plans and reports for the Site.

The quality assurance project plan incorporated EPA and State comments and requirements. The EPA and NMED reviewed the RI excavation work, confirmation sample collection, and data analysis completed in 1996. The EPA and NMED reviewed RA construction work completed on the 62-acre parcel in 2007 for compliance with QA/QC protocols. The RI excavation activities at the Site were determined to be consistent with the RI work plans and construction practices, while the 2007 RA construction activities were determined to be consistent with the ROD, and remedial design and RA work plans and specifications. No deviations or non-adherence to QA/QC protocols or specifications were identified.

All sampling equipment was properly maintained, inspected, and decontaminated as necessary during sampling events in accordance with instructions and protocols established in the field sampling plans and quality assurance project plans. The EPA analytical methods and contract laboratory program-like procedures and protocols were used for all confirmation and monitoring samples for soil using a private laboratory contracted by the potentially responsible party (PRP).

Based on remedial, third party, and supplemental Site investigation results, soil excavation on the northern 62-acre parcel addressed all identified soil areas that exceeded the ROD soil cleanup levels of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc. All confirmation sampling results are below the established cleanup level of 7.8 mg/kg BAP equivalent and 200 mg/kg zinc indicating that all soil remedial action objectives have been met. The excavated areas were backfilled with suitable materials meeting Site-specific cleanup levels and graded for proper drainage. In addition, ground water data have not identified areas of ground water contamination beneath the northern 62-acre parcel. The required ICs for protection of human health and the environment were filed on the subject property restricting land and ground water use.

Operation and Maintenance and Institutional Controls

Operation and maintenance actions for the northern 62-acre parcel of the Site proposed for partial deletion are limited. No treated soil repositories are located on this portion of the property and no ground water contamination plumes have been identified there. This portion of the property is currently fenced and partially reused as an auto unloading facility. The 62-acre parcel is under restricted land use (industrial only), and is under restricted ground water use controls which support ongoing remedial actions associated with the southern 27-acre parcel. Site inspections to determine whether land and ground water use restrictions are being met and to confirm that the ICs remain in place will be conducted at a minimum of once per year.

Five-Year Review

Since hazardous substances remain on-site at levels which do not allow unrestricted use and exposure, the Site's land and ground water use is restricted. The Site is subject to five-year reviews to ensure the continued protectiveness of the remedy consistent with section 121(c) of CERCLA, 42 U.S.C. 9621(c), 40 CFR 300.430(f)(4)(ii), and the current guidance on Five-Year Reviews (EPA 540–R–01–007, OSWER No. 9355.7–03B–P, *Comprehensive Five-Year Review Guidance,* June 2001). The NCP requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remain on-site at concentrations which do not allow for unlimited use and unrestricted exposure. Based on the five-year review results, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. The first five-year review will be completed no later than September 29, 2013.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Throughout the Site's history, the community has been interested and involved with Site activity. The EPA has kept the community and other interested parties updated on Site activities through informational meetings, fact sheets, and public meetings. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

In support of the partial deletion proposal, the EPA and NMED held an open house on October 14, 2010. The purpose of the meeting was to present and discuss the partial deletion

proposal. A fact sheet on the proposal was also mailed to the community.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP [40 CFR 300.425(e)] states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of New Mexico, has determined that all appropriate response actions under CERCLA for the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site, other than operation, maintenance, and five-year reviews, have been implemented, and no further response action by the PRP is appropriate.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 17, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–33109 Filed 1–4–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 101027536–0540–02]

RIN 0648–BA38

Endangered and Threatened Species, Designation of Critical Habitat for Southern Distinct Population Segment of Eulachon

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

ACTION: Proposed rule; request for comment.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for the southern Distinct Population Segment (DPS) of Pacific eulachon (*Thaleichthys pacificus*), which was recently listed as threatened under the Endangered Species Act (ESA). We have proposed 12 specific areas for designation as critical habitat within the states of California, Oregon, and Washington. The proposed areas are a combination of freshwater creeks and rivers and their associated estuaries which comprise approximately 470 km (292 mi) of habitat. Three particular areas are proposed for exclusion after evaluating the impacts and benefits associated with tribal land ownership and management by Indian tribes, but no areas are proposed for exclusion based on economic impacts.

We are soliciting comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed designation, as well as the benefits to the southern DPS of eulachon from designation. We will consider additional information received prior to making a final designation.

DATES: Comments on this proposed rule must be received by close of business on March 7, 2011. A public meeting has been scheduled for January 26, 2011 from 3:30–5:30 p.m. and 6–8 p.m. at the Doubletree Hotel, 1000 NE Multnomah Street, Portland, OR 97232. Requests for additional public hearings should be made in writing by February 22, 2011.

ADDRESSES: You may submit comments on the proposed rule, identified by RIN 0648–BA38, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 503–230–5441, *Attn:* Marc Romano.
- *Mail:* Chief, Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 Lloyd Blvd, Suite 1201, Portland, OR 97232.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. NMFS may elect not to post comments that contain obscene or threatening content. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule, list of references and supporting documents (including the Draft Eulachon Biological Report (NMFS 2010b); the Draft Eulachon Economic Analysis (NMFS 2010c); and, the Draft Eulachon Section 4(b)(2) Report (NMFS, 2010d)) are also available electronically at *http://www.nwr.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Marc Romano, NMFS, Northwest Region, Protected Resources Division, at the address above or at 503–231–2200, or Jim Simondet, NMFS, Southwest Region, Protected Resources Division, Arcata, CA 707–825–5171, or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2010, we listed the southern DPS of Pacific eulachon as threatened under the ESA (75 FR 13012). During the public comment period on the proposed rule to list the southern DPS of eulachon, we requested and received some information on the quality and extent of eulachon freshwater and estuarine habitat (73 FR 13185; March 12, 2008). However, at the time of listing, we concluded that critical habitat was not determinable because sufficient information was not available to: (1) Determine the geographical area occupied by the species; (2) identify the physical and biological features essential to conservation; and (3) assess the impacts of a designation. During promulgation of the final rule to list eulachon, we were working to compile the best available information necessary to consider a critical habitat designation. We have now researched, reviewed and summarized this best available information on eulachon, including recent biological surveys and reports, peer-reviewed literature, the NMFS status report for eulachon (NMFS 2010a), the proposed rule to list eulachon (74 FR 10857; March 13, 2009), and the final listing determination for eulachon (75 FR 13012; March 18, 2010) and had discussions with and considered recommendations by State, Federal, and tribal biologists familiar with eulachon. We used this information to identify the geographical area occupied, specific areas that may qualify as critical habitat for the southern DPS, as well as potential impacts associated with the designation and proposed exclusions.

We considered various alternatives to the critical habitat designation for

southern DPS eulachon. The alternative of not designating critical habitat for southern DPS eulachon would impose no economic, national security, or other relevant impacts, but would not provide any conservation benefit to the species. This alternative was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of southern DPS eulachon. The alternative of designating all of the areas considered for designation (*i.e.,* no areas excluded) was also considered and rejected because, for three areas, the benefits of exclusion outweighed the benefits of designation, and NMFS did not determine that exclusion of these areas would significantly impede conservation of the species or result in extinction of the species. The total estimated annualized economic impact associated with the designation of all of the areas considered would be $500,000 (discounted at 7 percent) or $520,000 (discounted at 3 percent).

An alternative to designating critical habitat within all of the areas considered for designation is the designation of critical habitat within a subset of these areas. Under section 4(b)(2) of the ESA, NMFS must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to southern DPS eulachon if an area were designated), so long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the areas considered for designation would reduce the total impacts of designation. The determination of which units to exclude depends on NMFS' ESA section 4(b)(2) analysis, which is conducted for each area and described in detail in the draft ESA 4(b)(2) report (NMFS, 2010b). Under the preferred alternative we propose to exclude three of the 14 areas considered (we propose to exclude two of the areas completely and part of the third area). The total estimated economic impact associated with this preferred alternative is $460,500 (discounted at 7 percent) or $479,000 (discounted at 3 percent). We determined that the exclusion of these areas would not significantly impede the conservation of southern DPS eulachon nor result in extinction of the species. We selected this as the preferred alternative because it results in a critical habitat designation that provides for the conservation of southern DPS eulachon while reducing other relevant impacts. This alternative also meets the requirements under the ESA and our joint NMFS-U.S. Fish and Wildlife Service (USFWS) regulations concerning critical habitat.

Section 3 of the ESA defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species." Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms "conserve," "conserving," and "conservation" to mean: "to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." Critical habitat cannot be designated in areas outside of U.S. jurisdiction (50 CFR 424.12h). Section 4 of the ESA requires that, before designating critical habitat, we consider economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary of Commerce (Secretary) may exclude any area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of designation, unless excluding an area from critical habitat will result in the extinction of the species concerned. Once critical habitat is designated, section 7(a)(2) of the ESA requires that each Federal agency, in consultation with NMFS and with our assistance, ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of critical habitat. This requirement is additional to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

Eulachon Natural History

Eulachon are an anadromous fish, meaning adults migrate from the ocean to spawn in freshwater creeks and rivers where their offspring hatch and migrate back to the ocean to forage until maturity. Although they spend 95 to 98 percent of their lives at sea (Hay and McCarter 2000), little is known concerning the saltwater existence of eulachon. The species is endemic to the northeastern Pacific Ocean, ranging from northern California to the southeastern Bering Sea in Bristol Bay, Alaska (McAllister, 1963; Scott and Crossman, 1973; Willson *et al.,* 2006). This distribution coincides closely with the distribution of the coastal temperate rain forest ecosystem on the west coast of North America (with the exception of populations spawning west of Cook Inlet, Alaska).

In the portion of the species' range that lies south of the U.S.-Canada border, most eulachon production originates in the Columbia River basin. Within the Columbia River basin, the major and most consistent spawning runs return to the mainstem of the Columbia River and the Cowlitz River. Spawning also occurs in other tributaries to the Columbia River, including the Grays, Elochoman, Kalama, Lewis, and Sandy Rivers (WDFW and ODFW, 2001). Historically, the only other large river basins in the contiguous United States where large, consistent spawning runs of eulachon have been documented are the Klamath River in northern California and the Umpqua River in Oregon. Eulachon have been found in numerous coastal rivers in northern California (including the Mad River and Redwood Creek), Oregon (including Tenmile Creek south of Yachats, OR) and Washington (including the Quinault and Elwha Rivers) (Emmett *et al.,* 1991; Willson *et al.,* 2006).

Major eulachon production areas in Canada are the Fraser and Nass rivers (Willson *et al.,* 2006). Numerous other river systems in central British Columbia and Alaska have consistent yearly runs of eulachon and historically supported significant levels of harvest (Willson *et al.,* 2006; NMFS, 2010a). Many sources note that runs occasionally occur in other rivers and streams, although these tend to be sporadic, appearing in some years but not others, and appearing only rarely in some river systems (Hay and McCarter, 2000; Willson *et al.,* 2006).

Early Life History and Maturation

Eulachon eggs can vary considerably in size but typically are approximately 1 mm (0.04 in) in diameter and average about 43 mg (0.002 oz) in weight (Hay and McCarter, 2000). Eggs are enclosed in a double membrane; after fertilization in the water, the outer membrane breaks and turns inside out, creating a sticky stalk which acts to anchor the eggs to

the substrate (Hart and McHugh, 1944; Hay and McCarter, 2000). Eulachon eggs hatch in 20 to 40 days with incubation time dependent on water temperature (Howell, 2001). Shortly after hatching, the larvae are carried downstream and dispersed by estuarine, tidal, and ocean currents. Larval eulachon may be retained in low salinity, surface waters of estuaries for several weeks or longer (Hay and McCarter, 2000) before entering the ocean. Similar to salmon, juvenile eulachon are thought to imprint on the chemical signature of their natal river basin. However, because juvenile eulachon spend less time in freshwater environments than do juvenile salmon, researchers believe that this short freshwater residence time may cause returning eulachon to stray between spawning sites at higher rates than salmon (Hay and McCarter, 2000).

Once juvenile eulachon enter the ocean, they move from shallow nearshore areas to deeper areas over the continental shelf. Larvae and young juveniles become widely distributed in coastal waters, where they are typically found near the ocean bottom in waters 20 to 150 m deep (66 to 292 ft) (Hay and McCarter, 2000) and sometimes as deep as 182 m (597 ft) (Barraclough, 1964). There is currently little information available about eulachon movements in nearshore marine areas and the open ocean. However, eulachon occur as bycatch in the ocean shrimp (*Pandalus jordani*) fishery (Hay *et al.,* 1999; Olsen *et al.,* 2000; NWFSC, 2008; Hannah and Jones, 2009), which seems to indicate that the distribution of these organisms may overlap in the ocean.

Spawning Behavior

Eulachon typically spend several years in salt water before returning to fresh water to spawn from late winter through early summer. Eulachon are semelparous, meaning that they spawn once and then die. Spawning grounds are typically in the lower reaches of larger rivers fed by snowmelt (Hay and McCarter, 2000). Willson *et al.* (2006) concluded that the age distribution of eulachon in a spawning run varies considerably, but typically consists of fish that are 2 to 5 years old. Eulachon eggs commonly adhere to sand (Langer *et al.,* 1977) or pea-sized gravel (Smith and Saalfeld, 1955), though eggs have been found on silt, gravel to cobble sized rock, and organic detritus (Smith and Saalfeld 1955, Langer *et al.,* 1977, Lewis *et al.,* 2002). Eggs found in areas of silt or organic debris reportedly suffer much higher mortality than those found in sand or gravel (Langer *et al.,* 1977).

In many rivers, spawning is limited to the part of the river that is influenced by tides (Lewis *et al.,* 2002), but some exceptions exist. In the Berners Bay system of Alaska, the greatest abundance of eulachon are observed in tidally-influenced reaches, but some fish ascend well beyond the tidal influence (Willson *et al.,* 2006). In the Kemano River, Canada, water velocity greater than 0.4 meters/second begins to limit the upstream movements of eulachon (Lewis *et al.,* 2002).

Entry into the spawning rivers appears to be related to water temperature and the occurrence of high tides (Ricker *et al.,* 1954; Smith and Saalfeld, 1955; Spangler, 2002). Spawning generally occurs in January, February, and March in the Columbia River, the Klamath River, and the coastal rivers of Washington and Oregon, and April and May in the Fraser River (NMFS, 2010a). Eulachon runs in central and northern British Columbia typically occur in late February and March or late March and early April. Attempts to characterize eulachon run timing are complicated by marked annual variation in timing. Willson *et al.* (2006) give several examples of spawning run timing varying by a month or more in rivers in British Columbia and Alaska. Climate change, especially in regards to ocean conditions, is considered a significant threat to eulachon and their habitats and may also be a factor in run timing (NMFS, 2010a). Most eulachon rivers are fed by extensive snowmelt or glacial runoff, so elevated temperatures and changes in snow pack and the timing and intensity of stream flows will likely impact eulachon run timing. There are already indications, perhaps in response to warming conditions and/or altered stream flow timing, that adult eulachon are returning earlier in the season to several rivers within the range of the southern DPS (Moody, 2008).

Water temperature at the time of spawning varies across the distribution of the species. Although spawning generally occurs at temperatures from 4 to 7 °C (39 to 45 °F) in the Cowlitz River (Smith and Saalfeld, 1955), and at a mean temperature of 3.1 °C (37.6 °F) in the Kemano and Wahoo Rivers, peak eulachon runs occur at noticeably colder temperatures (between 0 and 2 °C [32 and 36 °F]) in the Nass River. The Nass River run is also earlier than the eulachon run that occurs in the Fraser River, which typically has warmer temperatures than the Nass River (Langer *et al.,* 1977).

Prey

Eulachon adults feed on zooplankton, chiefly eating crustaceans such as copepods and euphausiids, including *Thysanoessa* spp. (Hay and McCarter, 2000; WDFW and ODFW, 2001), unidentified malacostracans (Sturdevant 1999), and cumaceans (Smith and Saalfeld, 1955). Eulachon larvae and juveniles eat a variety of prey items, including phytoplankton, copepods, copepod eggs, mysids, barnacle larvae, and worm larvae (WDFW and ODFW 2001). Adults and juveniles commonly forage at moderate depths (20–150 m [66–292 ft]) in nearshore marine waters (Hay and McCarter 2000). Eulachon adults do not feed during spawning (McHugh 1939, Hart and McHugh 1944).

Methods and Criteria Used To Identify Critical Habitat

In the following sections, we describe the relevant definitions and requirements in the ESA and our implementing regulations and the key methods and criteria used to prepare this proposed critical habitat designation. In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12), this proposed rule is based on the best scientific information available concerning the southern DPS's present and historical range, habitat, and biology, as well as threats to its habitat. In preparing this rule, we reviewed and summarized current information on eulachon, including recent biological surveys and reports, peer-reviewed literature, NMFS status reviews for southern DPS eulachon (NMFS 2010), the proposed rule to list eulachon (74 FR 10857; March 13, 2009), and the final listing determination for eulachon (75 FR 13012; March 18, 2010). All of the information gathered to create this proposed rule has been collated and analyzed in three supporting documents: The Draft Eulachon Biological Report (NMFS 2010b); the Draft Eulachon Economic Analysis (NMFS 2010c); and, the Draft Eulachon Section 4(b)(2) Report (NMFS 2010d).

We used this information to identify specific areas that may qualify as critical habitat for the southern DPS. We followed a five-step process in order to identify these specific areas: (1) Determine the geographical area occupied by the species, (2) identify physical or biological habitat features essential to the conservation of the species, (3) delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features, (4) determine whether the features in a specific area may require special management considerations or protections, and (5) determine whether any unoccupied areas are essential for conservation. Our evaluation and

conclusions are described in detail in the following sections.

Geographical Area Occupied by the Species

We relied on the best available data from commercial and recreational harvest, published literature, field observations (including river sampling with a variety of net types and research trawls), opportunistic sightings, and anecdotal information to determine the geographical area occupied by the southern DPS of eulachon at the time it was listed. The southern DPS ranges from the Skeena River in British Columbia, Canada, to the Mad River in California (NMFS 2010a). We cannot designate areas outside U.S. jurisdiction as critical habitat (see above). Thus, the geographical area under consideration for this designation is limited to areas under the jurisdiction of the United States, south of the international border with Canada, to the Mad River in California. At the time of listing, we had information indicating that the geographical area occupied consists of at least 42 river systems between the international border and the Mad River (NMFS, 2010b). Although eulachon presence has been documented in these systems, most river systems have limited or irregular sampling for eulachon and many other river systems within the range of the DPS have never been sampled. In addition, given the highly migratory nature of eulachon and the lack of published records, we do not know how far offshore southern DPS eulachon are distributed and thus how far offshore the geographical area occupied by the species extends.

Physical or Biological Features Essential for Conservation

Joint NMFS-U.S. Fish and Wildlife Service (USFWS) regulations at 50 CFR 424.12(b) state that in determining what areas are critical habitat, the agencies "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection". These include, but are not limited to: "(1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally: (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species."

Based on the best available scientific information, we developed a list of physical and biological features essential to the conservation of eulachon and relevant to determining whether occupied areas are consistent with the above regulations and the ESA section (3)(5)(A) definition of "critical habitat." The physical or biological features essential to the conservation of the southern DPS fall into three major categories reflecting key life history phases of eulachon:

(1) Freshwater spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation. These features are essential to conservation because without them the species cannot successfully spawn and produce offspring.

(2) Freshwater and estuarine migration corridors free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding after the yolk sac is depleted. These features are essential to conservation because they allow adult fish to swim upstream to reach spawning areas and they allow larval fish to proceed downstream and reach the ocean.

(3) Nearshore and offshore marine foraging habitat with water quality and available prey, supporting juveniles and adult survival. Juveniles eat phytoplankton, copepod eggs, copepods and other small zooplanktons (including euphausiids; Barraclough, 1964), and adults eat euphausiids and copepods (Hart, 1973). These features are essential to conservation because they allow juvenile fish to survive, grow, and reach maturity, and they allow adult fish to survive and return to freshwater systems to spawn.

The components of the freshwater spawning and incubation essential features include:

Flow: A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) that supports spawning, and survival of all life stages. Most spawning rivers experience a spring freshet characteristic of rivers draining large snow packs or glaciers (Hay and McCarter, 2000). In general, eulachon spawn at lower water levels before spring freshets (Lewis *et al.,* 2002). In the Kemano River, Canada, water velocity greater than 0.4 m/s (1.3 ft/s) begins to limit upstream movements (Lewis *et al.,* 2002). Sufficient flow may also be needed to flush silt and debris from spawning substrate surfaces to prevent suffocation of developing eggs.

Water Quality: Water quality suitable for spawning and viability of all eulachon life stages. Sublethal concentrations of contaminants affect the survival of aquatic species by increasing stress, predisposing organisms to disease, delaying development, and disrupting physiological processes, including reproduction. Adult eulachon can take up and store pollutants from their spawning rivers, despite the fact that they do not feed in fresh water and remain there only a few weeks (Rogers *et al.,* 1990; WDFW and ODFW, 2001). Eulachon have also been shown to avoid polluted waters when possible (Smith and Saalfeld 1955).

Water Temperature: Suitable water temperatures, within natural ranges, in eulachon spawning reaches. Water temperature between 4 °C and 10 °C (39 °F and 50 °F) in the Columbia River is preferred for spawning (WDFW and ODFW, 2001) although temperatures during spawning can be much colder in northern rivers (*e.g.,* 0 °C to 2 °C [32 °F to 36 °F] in the Nass River; Willson *et al.,* 2006). High water temperatures can lead to adult mortality and spawning failure (Blahm and McConnell, 1971).

Substrate: Spawning substrates for eulachon egg deposition and development. Spawning substrates typically consist of silt, sand, gravel, cobble, or detritus (NMFS 2010a). However, pea sized gravel (Smith and Saalfeld, 1955) and coarse sand (Langer *et al.,* 1977) are the most commonly used. Water depth for spawning can range from 8 cm (3 in) to at least 7.6 m (25 ft) (Willson *et al.,* 2006).

The components of the freshwater and estuarine migration corridor essential feature include:

Migratory Corridor: Safe and unobstructed migratory pathways for eulachon adults to pass from the ocean through estuarine areas to riverine habitats in order to spawn, and for larval eulachon to access rearing habitats within the estuaries and juvenile and adults to access habitats in the ocean. Lower reaches of larger river systems (*e.g.,* the Columbia River) are used as migration routes to upriver or tributary spawning areas. Out-migrating larval eulachon are distributed throughout the water column in some rivers (*e.g.,* the Fraser River) but are more abundant in mid-water and bottom portions of the water column in others (*e.g.,* the Columbia River; Howell *et al.,* 2001).

Flow: A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of

freshwater discharge over time) that supports spawning migration of adults and outmigration of larval eulachon from spawning sites. Most eulachon spawning rivers experience a spring freshet (Hay and McCarter, 2000) that may influence the timing of spawning adult migration. In general, eulachon spawn at low water levels before spring freshets (Lewis *et al.,* 2002). In the Kemano River water velocity greater than 0.4 m/s (1.3 ft/s) begins to limit upstream movements (Lewis *et al.,* 2002).

Water Quality: Water quality suitable for survival and migration of spawning adults and larval eulachon. Adult eulachon can take up and store pollutants from their spawning rivers, despite the fact that they do not feed in fresh water and remain there only a few weeks (Rogers *et al.,* 1990; WDFW and ODFW, 2001). Eulachon avoid polluted waters when possible (Smith and Saalfeld, 1955).

Water Temperature: Water temperature suitable for survival and migration. Eulachon run timing may be influenced by water temperature (Willson *et al.,* 2006), and high water temperatures can increase adult mortality (Blahm and McConnell, 1971). Given the range of temperatures in which eulachon spawn, Langer *et al.* (1977) suggested that the contrast between ocean and river temperatures might be more critical than absolute river or ocean temperatures.

Food: Prey resources to support larval eulachon survival. Eulachon larvae need abundant prey items (especially copepod larvae; Hart, 1973) when they begin exogenous feeding after the yolk sac is depleted. Eulachon yolk sac can be depleted between 6 and 21 days after hatching (Howell, 2001), and larvae may be retained in low salinity, surface waters of the natal estuary for several weeks or longer (Hay and McCarter, 2000), making this an important component in migratory corridor habitat.

The components of the nearshore and offshore marine foraging essential feature include:

Food: Prey items, in a concentration that supports foraging leading to adequate growth and reproductive development for juveniles and adults in the marine environment. Juveniles eat phytoplankton, copepod eggs, copepods and other small zooplankton (including euphausiids; Barraclough, 1964), and adults eat euphausiids and copepods (Hart, 1973).

Water Quality: Water quality suitable for adequate growth and reproductive development. The water quality requirements for eulachon in marine habitats are largely unknown, but they would likely include adequate dissolved oxygen levels, adequate temperature, and lack of contaminants (such as pesticides, organochlorines, elevated levels of heavy metals) that may disrupt behavior, growth, and viability of eulachon and their prey.

Specific Areas Within the Geographical Area Occupied by the Species

After determining the geographical area occupied by the southern DPS of eulachon, and the physical and biological features essential to their conservation, we next identified the specific areas within the geographical area occupied by the species that contain the essential features. All of the essential physical and biological features we identified within the freshwater and estuarine environment are within specific areas associated with spawning, or with migrations related to spawning events. In order to delineate specific areas where the spawning sites and migration corridors occur, we relied on evidence of eulachon spawning and migration. To ensure that our selection of the specific areas was based on the best available information we developed two criteria to identify areas where spawning, and spawning migration, occurs. These criteria are sites that contain: (1) Larval fish or pre-/post-spawn adults that have been positively identified and documented; or (2) commercial or recreational catches that have been documented over multiple years. Within the geographic area occupied by the southern DPS, there are 42 creeks and rivers with documented presence of eulachon (NMFS, 2010a). Of these, we identified 14 that meet at least one of the criteria for spawning.

We next considered the distribution of the essential features within these creeks or rivers. We again used evidence of eulachon spawning and spawning migration to delineate the extent of the specific areas where the spawning sites and spawning migration corridors are found. We relied on data from published literature, field observations (including river sampling with a variety of net types), opportunistic sightings, commercial and recreational harvest, and anecdotal information. Given the extremely limited sampling done for this species, we chose to rely on the most recent information available to us to determine which areas were eligible for designation. For some creeks and rivers, opportunistic sightings are the only information that is available to identify the distribution of the essential features, and in these cases we relied on the best professional judgment of agency and tribal biologists familiar with the area to identify the extent of the essential features.

The 14 specific freshwater and estuarine areas which contain one or more of the essential physical or biological features are described below and summarized in Table 1, which appears at the end of the Special Management Considerations section. The draft biological report (available via the internet and by contacting NMFS; *see* **ADDRESSES**) provides more detailed information on each specific area, including a description of the essential physical and biological features, special management considerations or protection that may be needed, and the presence and distribution of southern DPS eulachon.

(1) *Mad River, CA:* The Mad River is located in northwestern California. It flows for 150 km (95 mi) in a roughly northwest direction through Trinity and Humboldt Counties, draining a 1,290 km^2 (497 mi^2) basin into the Pacific Ocean near McKinleyville, California. The river's headwaters are in the Coast Range mountains near South Kelsey Ridge.

Eulachon consistently spawned in large numbers in the Mad River as recently as the 1960s and 1970s (Moyle *et al.,* 1995; Moyle, 2002; NMFS, 2010a). However, in recent years eulachon numbers have declined, and they are now considered rare (Sweetnam *et al.,* 2001). Based on observations by the California Department of Fish and Game (CDFG), spawning occurs as far upstream as the confluence with the North Fork of the Mad River (CDFG, 2009). The river below this point contains overlapping spawning and incubation sites and migration corridor features.

(2) *Redwood Creek, CA:* Redwood Creek is located entirely in Humboldt County, in northwestern California. The basin is approximately 105 km (65 mi) long, and drains approximately 738 km^2 (285 mi^2), most of which is forested and mountainous terrain (Cannata *et al.,* 2006).

Eulachon have been reported from Redwood Creek by a variety of sources (Young, 1984; Ridenhour and Hofstra, 1994; Moyle *et al.,* 1995; Larson and Belchik, 1998), and runs large enough to be noted in available local newspaper accounts occurred in 1963 and 1967. Eulachon returns to Redwood Creek have declined drastically in recent years, and they are now considered rare (Sweetnam *et al.,* 2001). Although the species is not currently targeted in sampling efforts, CDFG reported that during the early 1970s eulachon regularly spawned between the ocean and the mouth of Prairie Creek (the first

major tributary on Redwood Creek; Moyle *et al.,* 1995) indicating that this area contains the spawning and incubation, and migration corridor essential features. Spawning also occurred in the lower 0.5 km (0.3 mi) of Prairie Creek (Moyle *et al.,* 1995), however eulachon have not been seen in Prairie Creek since the 1970s.

The lower reach of Redwood Creek alternates between an open estuary and a closed coastal lagoon depending on the season. During early summer a sand bar typically forms across the river mouth creating a lagoon. Rains during the fall typically clear the sand bar away and open up the river mouth to the ocean (Cannata *et al.,* 2006).

(3) *Klamath River, CA:* The Klamath River basin drains approximately 25,100 km^2 (9,690 mi^2) in southern Oregon and northern California, making it the second largest river in California (after the Sacramento River). Historically, the Klamath River has been a major producer of anadromous fish, and once was the third most productive salmon and steelhead fishery in the continental United States, prior to recent significant declines (Powers *et al.,* 2005).

Historically, large aggregations of eulachon consistently spawned in the Klamath River, and a commercial fishery occurred there in 1963. During the spawning run, fish were regularly caught from the mouth of the river upstream to Brooks Riffle, near the confluence with Omogar Creek (Larson and Belchik, 1998), indicating that this area contains the spawning and incubation, and migration corridor essential features.

The only reported commercial catch of eulachon in Northern California occurred in 1963 when a combined total of 25 metric tons (56,000 lbs) was landed from the Klamath River, the Mad River, and Redwood Creek (Odemar, 1964). Since 1963, the run size has declined to the point that only a few individual fish have been caught in recent years. According to accounts of Yurok Tribal elders, the last noticeable runs of eulachon were observed in the Klamath River in 1988 and 1989 by tribal fishers (Larson and Belchik, 1998). However, in January 2007, six eulachon were reportedly caught by tribal fishers on the Klamath River (Yurok Tribe, 2008). Larson and Belchik (1998) report that eulachon have not been of commercial importance in the Klamath in recent years and are unstudied as to their current run strengths.

Approximately 68 km (42 mi) of the lower Klamath River is bordered by the Yurok Indian Reservation. The lower Klamath River is listed as a National Wild and Scenic River from the mouth, upstream to just below Iron Gate Dam, for a total of 460 km (286 mi). Of these, 19 km (12 mi) are designated Wild, 39 km (24 mi) are designated Scenic, and 402 km (250 mi) are designated Recreational.

(4) *Umpqua River/Winchester Bay, OR:* The Umpqua River Basin consists of a 10,925 km^2 (4,220 mi^2) drainage area comprised of the main Umpqua River, the North Umpqua River, the South Umpqua River, and associated tributary streams (Snyder *et al.* 2006). The Umpqua River drains a varied landscape, from steep-sloped uplands, to low gradient broad floodplains. Upstream, the Umpqua River collects water from tributaries as far east as the Cascade Mountains.

Historically, a large and consistent run of eulachon returned to the Umpqua River, and both recreational and commercial fisheries occurred. The Umpqua River eulachon sport fishery was active for many years during the 1970s and 1980s, with the majority of fishing activity centered near the town of Scottsburg. A commercial fishery also harvested eulachon during that time. The Oregon Fish Commission (1970) reported that from four to five thousand pounds of eulachon were landed by two commercial fishermen in the Umpqua River during 31 days of drift gill net fishing from late December 1966 to mid-March 1967. Numbers of fish returning to the Umpqua seem to have declined in the 1980s and do not appear to have rebounded to previous levels. Johnson *et al.* (1986) list eulachon as occurring in trace amounts in their trawl and beach-seine samples from April 1977 to January 1986. Williams (2009) reported on the results of seine collections conducted during March to November from 1995 to 2003 in Winchester Bay estuary on the Lower Umpqua River, which confirmed the presence of eulachon in four of the years in which sampling occurred.

Eulachon have been documented in the lower Umpqua River during spawning, from the mouth upstream to the confluence of Mill Creek, just below Scottsburg (Williams, 2009). This indicates that the area downstream from this confluence contains the spawning and incubation, and migration corridor essential features.

(5) *Tenmile Creek, OR:* The Tenmile Creek watershed lies entirely within Lane County, Oregon and encompasses approximately 60 km^2 (23 mi^2) on the central Oregon Coast (Johnson, 1999). The watershed is in a unique location, between the Cummins Creek and Rock Creek wilderness areas. Together, this area is part of the largest remaining contiguous coastal temperate forest in the Pacific Northwest.

Eulachon are regularly caught in salmonid smolt traps operated in the lower reaches of Tenmile Creek by the Oregon Department of Fish and Wildlife (ODFW). During previous sampling efforts, 80–90 percent of the eulachon captured in the traps were spawned out and several fish were found dead (Williams, 2009). Given the timing of the sampling (February to May), it is very likely that spawning occurs regularly in Tenmile Creek. It is not known how far adult eulachon ascend the creek to spawn, but the location of the ODFW trap (just upstream of the Highway 101 bridge) is the confirmed upstream extent of adult eulachon in spawning condition, and we conclude that the specific area containing spawning and incubation sites extends upstream at least to this point (ODFW, 2009).

(6) *Sandy River, OR:* The Sandy River and its tributaries drain 1,316 km^2 (508 mi^2). Most of the headwaters of the Sandy River are within Clackamas County, while the lower mainstem of the river lies within Multnomah County. The Sandy River originates from glaciers on Mount Hood and flows for 90 km (56 mi) to join the Columbia River near the City of Troutdale (Sandy River Basin Watershed Council, 1999). The segment of the Sandy River from Dodge Park to Dabney State Park was designated as a National Wild and Scenic River in October 1988.

Large commercial and recreational fisheries have occurred in the Sandy River in the past. The most recent commercial harvest in the Sandy River was in 2003 and resulted in a catch of 10,400 kg (23,000 lbs) (JCRMS 2009). During spawning, eulachon extent in the Sandy River is typically upstream to the confluence with Gordon Creek at river km 21 (river mi 13) (Anderson 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

(7) *Lower Columbia River, OR and WA:* The lower Columbia River and its tributaries support the largest known spawning run of eulachon. The mainstem of the lower Columbia River provides spawning and incubation sites, and a large migratory corridor to spawning areas in the tributaries. Major tributaries of the Columbia River that have supported eulachon runs in the past include the Grays, Elochoman, Cowlitz, Kalama and Lewis Rivers in Washington and the Sandy River in Oregon (the Columbia River tributaries in Washington State are discussed below as separate specific areas).

Although direct estimates of adult spawning stock abundance in the Columbia River are unavailable, records of commercial fishery landings begin in 1888 and continue as a nearly uninterrupted data set to present (NMFS, 2010a). A large recreational dipnet fishery, for which catch records have not been maintained, has taken place concurrent with the commercial fishery (WDFW and ODFW, 2001). However, the dipnet fishery takes place almost entirely within the tributaries. During spawning, adult eulachon are found in the lower Columbia River from the mouth of the river to immediately downstream of Bonneville Dam (WDFW and ODFW, 2008), indicating that the area contains the essential feature of migration corridors. Eulachon eggs have been collected, and spawning presumed, from river km 56 (river mi 35) to river km 117 (river mi 73) (Romano *et al.,* 2002) indicating that this area contains the spawning and incubation essential feature. However, due to the limited range of the study, the entire range of eulachon spawning in the mainstem of the Columbia River remains unknown (Romano *et al.,* 2002). Prior to the construction of Bonneville Dam, eulachon ascended the Columbia River as far as Hood River, Oregon (Smith and Saalfeld, 1955). An extensive fish passage facility is installed at the dam, however eulachon have not been reported upstream of Bonneville Dam since 1953 (FCO, 1953), and it is uncertain whether they can navigate the facility.

The Columbia River, estimated to have historically represented half of the species' abundance, experienced a sudden decline in its commercial eulachon fishery landings in 1993–1994 (WDFW and ODFW, 2001; JCRMS, 2009). Commercial catch levels were consistently high (usually greater than 500 metric tons [550 tons] and often greater than 1,000 metric tons [1,100 tons]) for the three quarters of a century from about 1915 to 1992. In 1993, catches declined greatly to 233 metric tons (257 tons) and to an average of less than 40 metric tons (44 tons) between 1994 and 2000. From 2001 to 2004, the catches increased to an average of 266 metric tons (293 tons), before falling to an average of less than 5 metric tons (5.5 tons) from 2005 to 2008. Some of this pattern is due to fishery restrictions put in place in response to the apparent sharp declines in the species abundance. Persistent low returns and landings of eulachon in the Columbia River from 1993 to 2000 prompted the states of Oregon and Washington to adopt a Joint State Eulachon Management Plan in 2001 that provides for restricted harvest management when parental run strength, juvenile production, and ocean productivity forecast a poor return (WDFW and ODFW, 2001). Despite a brief period of improved returns in 2001–2003, the returns and associated commercial landings have again declined to the very low levels observed in the mid-1990s (JCRMS, 2009), and since 2005, the fishery has operated at the most conservative level allowed in the Joint State Eulachon Management Plan (JCRMS, 2009).

(8) *Grays River, WA:* The Grays River watershed is located in Pacific and Wahkiakum counties, in Washington State. The Grays River is a tributary of the Columbia River, which it enters near the town of Oneida, Washington. The Grays River watershed encompasses 322 km^2 (124 mi^2) (May and Geist, 2007).

From 1980 to 1989 the annual commercial harvest of eulachon in the Grays River varied from 0 to16 metric tons (0 to 35,000 lbs.). No commercial harvest has been recorded for the Grays River from 1990 to the present but larval sampling has confirmed successful spawning in recent years (*e.g.,* 2009; JCRMS, 2009). During spawning, eulachon typically ascend the river as far as 17.3 km (10.8 miles), to the covered bridge near the unincorporated town of Grays River, WA (Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

(9) *Elochoman River, WA:* The Elochoman River is a tributary of the Columbia River in southwest Washington and it originates in the Willapa Hills. The watershed lies within Lewis, Cowlitz, and Wahkiakum counties and flows generally south to the Columbia River. The combined Elochoman/Skamokawa watershed area is approximately 422 km^2 (163 mi^2) with the Elochoman accounting for the majority of the area (LCFRB, 2004a).

Eulachon spawn occasionally in the Elochoman River, although there is no history of commercial or recreational harvest of eulachon for the Elochoman River. Sampling of outmigrating larval eulachon by WDFW has confirmed spawning in the river 6 times in the last 15 years, most recently in 2008 (JCRMS, 2009). WDFW has documented spawning eulachon as far as 3.2 km (2 mi) up the lower Elochoman River to the Washington State Highway 4 bridge crossing (Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features. If eulachon ascend the river beyond this point, the water intake dam at the old Beaver Creek Hatchery (located on the Elochoman River at river km 8 [river mi 5]) may be a barrier to any further upstream migration of eulachon (Wade, 2002).

(10) *Cowlitz River, WA:* The Cowlitz River flows from its source on the west slope of the Cascade Mountains through the towns of Kelso and Longview, WA, and empties into the Columbia River about 109 km (68 mi) upstream from the Pacific Ocean. The Cowlitz River drains approximately 6,400 km^2 (2,480 mi^2) over a distance of 243 km (151 mi) (Dammers *et al.,* 2002). Principal tributaries to the Cowlitz River include the Coweeman, Toutle, Tilton, and Cispus Rivers.

The Cowlitz River is likely the most productive and important spawning river for eulachon within the Columbia River system (Wydoski and Whitney, 2003). Spawning adults typically move upstream about 26 km (16 mi) to the town of Castle Rock, WA or beyond to the confluence with the Toutle River. Adults are regularly sighted from the mouth of the river to 55 km (34 mi) upstream (near the town of Toledo, WA). Eulachon are occasionally sighted as far as 80 km (50 mi) upstream, to the barrier dam at the Cowlitz Salmon Hatchery (WDFW and ODFW, 2008; Anderson, 2009), indicating that this area contains the spawning and incubation, and migration corridor essential features.

The Cowlitz River currently has 3 major hydroelectric dams and several small-scale hydropower and sediment retention structures located on tributaries within the Cowlitz Basin. Mayfield Dam is located at river km 84 (river mi 52) and is a complete barrier to upstream migration of anadromous fishes (LCFRB, 2004b) (although the salmon hatchery barrier dam at river km 80 (river mi 50) may also be a complete barrier to eulachon).

(11) *Kalama River, WA:* The Kalama River basin is a 531 km^2 (205 mi^2) watershed extending from the southwest slopes of Mount St. Helens to the Columbia River (LCFRB, 2004e). The headwaters of the Kalama River begin in Skamania County, WA, but the majority of the 72 km (45 mi) river flows within Cowlitz County. At river km 16 (river mi 10), a concrete barrier dam and fish ladder prevent upstream movement of all anadromous fishes with the exception of summer steelhead and spring Chinook salmon (LCFRB, 2004c).

The extent of spawning within the Kalama River is from the confluence with the Columbia River to the Modrow Bridge (Anderson, 2009) at river km 4.5 (river mi 2.8), indicating that this area contains the spawning and incubation, and migration corridor essential

features. Although the last commercial harvest of eulachon in the Kalama River occurred in 1993, sampling for larval eulachon has confirmed spawning in the Kalama River as recently as 2002 (JCRMS, 2009).

(12) *Lewis River, WA:* The Lewis River enters the Columbia River 104 km (87 mi) upstream from the mouth of the Columbia River, a few kilometers north of the town of Ridgefield, Washington. The majority of the 1,893 km^2 (731 mi^2) watershed lies within Lewis and Skamania Counties (LCFRB, 2004d). Although generally not considered as large a eulachon run as the Cowlitz River, the Lewis River has produced very large runs periodically. Nearly half of the total commercial eulachon catch for the Columbia River Basin in 2002 and 2003 came from the Lewis River. Larval eulachon are caught in WDFW sampling on the Lewis River, including during the past three years (2007–09) (JCRMS, 2009). During spawning, eulachon typically move upstream in the Lewis River about 16 km (10 mi; to Eagle Island), but they have been observed upstream to the Merwin Dam (31.4 km [19.5 mi] from the mouth of the river) (WDFW and ODFW, 2008; Anderson, 2009) indicating that this area contains the spawning and incubation, and migration corridor essential features.

Merwin Dam is 240 feet high and was completed in 1931. The dam presents a passage barrier to all anadromous fish, including eulachon (LCFRB, 2004d). We are unable to find information to determine whether eulachon ascended the river beyond river km 31.4 (river mi 19.5) prior to construction of the dam.

(13) *Quinault River, WA:* The headwaters of the Quinault River originate in the Olympic Mountains within Olympic National Park. The river then crosses into the Quinault Indian Reservation where it flows into Lake Quinault. Downstream of the lake, the Quinault River remains within the Quinault Indian Reservation for another 53 km (33 mi) to the Pacific Ocean. The total watershed area is 1,190 km^2 (460 mi^2) (Smith and Caldwell, 2001).

Although there is currently no monitoring for eulachon in the Quinault River, WDFW and ODFW (2001) reported that eulachon "were noted in large abundance in the Quinault" River in 1993. A noticeable number of eulachon make an appearance in the Quinault River, and to a lesser extent the Queets River, at 5 to 6 year intervals and were last observed in the Quinault River in the winter of 2004–2005 (Quinault Indian Nation, 2008). There is very little information on eulachon spawning distribution in the Quinault River, but tribal fishermen targeting eulachon typically catch fish in the lower three miles of the river (Quinault Indian Nation, 2008). It is reasonable to conclude that this area contains the spawning and incubation, and migration corridor essential features.

Although eulachon are currently only occasionally recorded in the Quinault River, during the late 19th and early 20th century eulachon were regularly caught by members of the Quinault Indian Tribe (Willoughby, 1889; Olson, 1936). Fish were typically taken in the ocean surf but often ascended the river for several miles (Olson, 1936). Olson (1936) reported that there was usually a large run of eulachon in the Quinault River every three or four years, and the run timing varied, usually occurring between January and April. The Washington Department of Fisheries annual report for 1960 (Starlund, 1960) listed commercial eulachon landings in the Quinault River in 1936, 1940, 1953, 1958 and 1960. The commercial catches ranged from a low of 61 kg (135 lbs.) in 1960, to a high of 42,449 kg (93,387 lbs.) in 1953.

Nearly half of the watershed lies within Olympic National Park, under the jurisdiction of the National Park Service, while the Quinault Indian reservation comprises about one third (32 percent) of the watershed, including most of the area downstream of Lake Quinault (Quinault Indian Nation and U.S. Forest Service, 1999). The U.S. Forest Service manages 13 percent of the watershed, and private landholdings comprise only 4 percent of the lands in the watershed (Smith and Caldwell, 2001).

(14) *Elwha River, WA:* The Elwha River mainstem is approximately 72 km (45 mi) long, and it drains 831 km^2 (321 mi^2) of the Olympic Peninsula. A majority of the drainage (83 percent) is within Olympic National Park (Elwha-Dungeness Planning Unit, 2005). The historical condition of the river has been altered by two major hydroelectric developments: the Elwha Dam and the Glines Canyon Dam (located just upstream of the Elwha Dam).

In 2005, eulachon were observed in the Elwha River for the first time since the 1970s (Shaffer *et al.,* 2007). Since 2005, adult eulachon have been captured in the Elwha River every year (2006–2010) (Lower Elwha Klallam Indian Tribe, 2010). Several of the fish captured in 2005 were ripe (egg-extruding) females, indicating that eulachon likely spawn in the Elwha River. The Elwha Dam serves as a complete barrier to upstream fish migration, and thus it is reasonable to assume that the spawning and incubation, and migration corridor essential features only extend to that point in the Elwha River. It is not known if eulachon ascended the Elwha River beyond river km 7.9 (river mi 4.9) prior to the construction of the Elwha Dam, and it is also not known if the portion of the river above Elwha Dam will provide the physical and biological features essential to eulachon once the dam is removed. As part of a comprehensive restoration of the watershed's ecosystem and its fisheries, the Elwha and Glines Canyon dams were acquired by the Federal government in 2000 and their removal is scheduled to begin in 2011.

All Areas: We delineated each specific area as extending from the mouth of the river or creek (or its associated estuary when applicable) upstream to a fixed location. We delineated the upstream extent based on evidence of eulachon spawning or presence, or the presence of an impassable barrier. The boundary at the mouth of each specific area was defined by the demarcation lines which delineate "those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with the Inland Navigation Rules" (33 CFR 80.01). For those specific areas that do not have a COLREGS line delineated, the boundary at the mouth of those specific areas was defined as a line drawn from the northernmost seaward extremity of the mouth of the creek or river to the southernmost seaward extremity of the mouth (with the exception of the boundary at the mouth of the Elwha River, which was defined as a line drawn from the easternmost seaward extremity of the mouth of the river to the westernmost seaward extremity of the mouth).

Areas Not Considered for Designation at This Time

Nearshore and offshore marine foraging habitat is essential for juvenile eulachon to survive and grow to adulthood, and for adults to survive and reproduce. At this time we have little information on eulachon distribution in marine waters and no information on where eulachon foraging habitat might occur. For these reasons, we are unable to identify any specific areas in marine waters that meet the definition of critical habitat under the ESA. Although we cannot presently identify any specific marine areas where foraging takes place, we will continue to gather information and will consider revising the designation in future rulemaking if new information supports doing so.

Special Management Considerations

Physical or biological features meet the definition of critical habitat if they "may require special management considerations or protection." Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define "special management considerations or protection" to mean "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." We identified a number of activities that may affect the physical and biological features essential to the southern DPS of eulachon such that special management considerations or protection may be required. Major categories of such activities include: (1) Dams and water diversions; (2) dredging and disposal of dredged material; (3) in-water construction or alterations, including channel modifications/diking, shoreline stabilization, sand and gravel mining, and road building and maintenance; (4) pollution and runoff from point and non-point sources including industrial activities, urbanization, grazing, agriculture, and forestry operations; (5) proposed tidal, wind, or wave energy projects; (6) port and shipping terminals; and (7) habitat restoration projects. All of these activities may have an effect on one or more of the essential physical and biological features via their alteration of one or more of the following: stream hydrology; water level and flow; water temperature; dissolved oxygen; erosion and sediment input/transport; physical habitat structure; vegetation; soils; nutrients and chemicals; fish passage; and estuarine/marine prey resources.

In the following paragraphs, we describe the potential effects of certain activities on essential physical or biological features, and we summarize the occurrence of these activities in the specific areas in Table 1 below (examples of activities that may require special management considerations for each of the specific areas are listed in the Draft Eulachon Biological Report (NMFS, 2010b)). This is not an exhaustive list of potential effects, but rather a description of the primary concerns and potential effects that we are aware of at this time and that should be considered in the analysis of these activities under section 7 of the ESA.

(1) *Dams and Water Diversions:* Physical structures associated with dams and water diversions may impede or delay passage of southern DPS eulachon. The operation of dams and water diversions may also affect water flow, water quality parameters, substrate quality, and depth, and further compromise the ability of adult eulachon to reproduce successfully. Optimum flow and temperature requirements for spawning and incubation are unclear, but effects on water flow and associated effects on water quality (*e.g.,* water temperature) and substrate composition may affect adult spawning activity, egg viability, and larval growth, development, and survival. Many uncertainties remain about how large-scale hydropower development (*e.g.,* the Federal Columbia River Power System) affects eulachon habitat.

(2) *Dredging:* Dredging activities, which include the disposal of dredged material, may affect depth, sediment quality, water quality, and prey resources for eulachon. Dredging and the in-river disposal of dredged material can remove, and/or alter the composition of, substrate materials at the dredge site, as well as bury them at the disposal site (potentially altering the quality of substrate for use as a spawning site). In addition, dredging operations and disposal of dredged materials may result in the re-suspension and spread of contaminated sediments, which can adversely affect eulachon migration and spawning, as well as larval growth and development. The effects of dredging and disposal activities on critical habitat would depend on factors such as the location, seasonality, scale, frequency, and duration of these activities.

(3) *In-Water Construction or Alterations:* This category consists of a broad range of activities associated with in-water structures or activities that alter habitat within rivers, estuaries, and coastal marine waters. The primary concerns are with activities that may affect water quality, water flow, sediment quality, substrate composition, or migratory corridors. Activities that may affect water quality include the installation of in-water structures (such as pilings) with protective coatings containing chemicals that may leach into the water. Activities that affect flow, sediment quality and substrate composition include those that result in increased erosion and sedimentation (such as road maintenance and construction, bridge construction, construction of levees and other flood control devices, construction or repair of breakwaters, docks, piers, pilings, bulkheads, and boat ramps) and those that directly alter substrates (such as sand and gravel mining or gravel augmentation). Activities that may affect migratory corridors include the construction of in-water structures, such as docks, piers, pilings, and ramps.

(4) *Pollution and Runoff:* The discharge of pollutants and runoff from point and non-point sources (including but not limited to: Industrial discharges, urbanization, grazing, agriculture, road surfaces, road construction, and forestry operations) can adversely affect the water quality, sediment quality, and substrate composition of eulachon critical habitat. Exposure to contaminants may disrupt eulachon spawning migration patterns, and high concentrations may be lethal to young fish (Smith and Saalfeld, 1955). Excessive runoff may increase turbidity and alter the quality of spawning substrates.

(5) *Proposed Tidal, Wind, or Wave Energy Projects:* Proposed tidal, wind, or wave energy projects generally require energy generating equipment and supporting structures to be anchored on the bottom. However, there are a wide range of designs currently being tested and potential impacts of individual projects will vary depending on the type of unit being deployed. Proposed projects may be located in coastal marine waters or coastal estuaries. Physical structures associated with tidal, wind, or wave energy projects may impede or delay passage of southern DPS eulachon. In addition, construction and maintenance of these energy projects may require in water construction or alterations, which would include the potential effects described above.

(6) *Port and Shipping Terminals:* The operation of port and shipping terminals poses the risk of leaks, spills, or pipeline breakage and may affect water quality. Vessel ballast water management (including the introduction of competitors or parasites) may also affect water quality. In addition, activities associated with the construction, operation, and maintenance of port and shipping terminals may affect water quality, sediment quality, and prey resources for larval eulachon. For example, dredging operations and in-water and shoreline construction activities associated with the construction and operation of port and shipping terminals may result in increased erosion and sedimentation, increased turbidity, and the re-suspension of contaminated sediments.

(7) *Habitat Restoration Projects:* Habitat restoration activities are efforts undertaken to improve habitat, and can include the installation of fish passage structures and fish screens, in-stream barrier modification, bank stabilization, installation of instream structures, such as engineered log jams, substrate augmentation, planting of riparian vegetation, and many other habitat-

related activities. Although the primary purpose of these activities is to improve natural habitats for the benefit of native species, these activities nonetheless modify the habitat and need to be evaluated to ensure that they do not adversely affect the habitat features essential to eulachon. While habitat restoration activities would be encouraged as long as they promote the conservation of the species, project modifications in the form of spatial and temporal restrictions may be required as a result of this designation.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of "specific areas outside the geographical area occupied at the time [the species] is listed" if these areas are essential for the conservation of the species. Regulations at 50 CFR 424.12(e) emphasize that the agency "shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Nearly all of the documented historical presence and production of southern DPS eulachon comes from within the geographical area occupied by the southern DPS at the time of listing. Sightings of southern DPS eulachon from creeks or rivers outside of this area have been extremely infrequent, and have consisted of very few fish (NMFS, 2010). Therefore, we do not consider these areas to be essential to the conservation of the southern DPS of eulachon, and thus we are not considering any unoccupied areas as critical habitat for the DPS.

TABLE 1—SUMMARY OF OCCUPIED SPECIFIC AREAS THAT CONTAIN THE PHYSICAL OR BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF THE SOUTHERN DPS OF EULACHON. THE RIVER MILES CONTAINING THE ESSENTIAL PHYSICAL AND BIOLOGICAL FEATURES PRESENT, AND ACTIVITIES THAT MAY AFFECT THE ESSENTIAL FEATURES AND NECESSITATE THE NEED FOR SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTION WITHIN EACH AREA ARE LISTED

[DAM = dams and water diversions; DR = dredging and disposal of dredged material; CON = in-water construction or alterations, including channel modifications/diking; POLL = pollution and runoff from point and non-point sources; ENER = tidal energy or wave energy projects; PORT = operation of port and shipping terminals; REST = habitat restoration projects]

Specific area	River kilometers/miles	Physical or biological features	Activities
Mad River, CA	20.3/12.6	Migration, Spawning	DAM, CON, POLL.
Redwood Creek, CA	6.1/3.8	Migration, Spawning	DAM, POLL.
Klamath River, CA	17.5/10.9	Migration, Spawning	DAM, DR, CON, POLL.
Umpqua River, OR	43.5/27.0	Migration, Spawning	DAM, DR, POLL.
Tenmile Creek, OR	0.8/0.5	Migration, Spawning	CON, POLL.
Sandy River, OR	20.9/13.0	Migration, Spawning	DAM, CON, POLL.
Columbia River, OR and WA	235.0/146.0	Migration, Spawning	DAM, DR, CON, POLL, ENER, PORT, REST.
Grays River, WA	17.4/10.8	Migration, Spawning	DAM, DR, CON, POLL.
Elochoman River, WA	3.2/2.0	Migration, Spawning	CON, POLL.
Cowlitz River, WA	80.5/50.0	Migration, Spawning	DAM, DR, CON, POLL, PORT, REST.
Kalama River, WA	4.5/2.8	Migration, Spawning	DAM, CON, POLL.
Lewis River, WA	31.4/19.5	Migration, Spawning	DAM, CON, POLL.
Quinault River, WA	4.8/3.0	Migration, Spawning	CON, POLL.
Elwha River, WA	7.9/4.9	Migration, Spawning	DAM, CON, POLL, REST.

Military Lands

The ESA was amended by the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) to address the designation of military lands as critical habitat. ESA section 4(a)(3)(B)(i) states: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." Department of Defense lands do not overlap with, nor are adjacent to, any areas proposed for designation as critical habitat for the southern DPS so there are no known potential areas that would be removed from designation under ESA Section 4(a)(3)(B)(i).

Application of ESA Section 4(b)(2)

The foregoing discussion describes the specific areas that fall within the ESA section 3(5) definition of critical habitat and are eligible for designation as critical habitat. Specific areas eligible for designation are not automatically designated as critical habitat. Section 4(b)(2) of the ESA requires the Secretary to first consider the economic impact, impact on national security, and any other relevant impact of designation. The Secretary has the discretion to exclude an area from designation if he determines the benefits of exclusion (that is, avoiding the impact that would result from designation) outweigh the benefits of designation based upon best scientific and commercial data. In adopting this provision, Congress explained that, "[t]he consideration and weight given to any particular impact is completely within the Secretary's discretion." H.R. Rep. No. 95–1625, at 16–17 (1978). The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any area.

The first step in conducting an ESA section 4(b)(2) analysis is to identify the "particular areas" to be analyzed. Section 3(5) of the ESA defines critical habitat as "specific areas," while section 4(b)(2) requires the agency to consider certain factors before designating any "particular area." Depending on the biology of the species, the characteristics of its habitat, and the nature of the impacts of designation, "specific" areas might be different from, or the same as, "particular" areas. For this designation, we analyzed two types of "particular" areas. Where we considered economic impacts, and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically based "specific" areas we had identified under section 3(5)(A).

Specifically, these areas were the occupied freshwater and estuarine areas that contain the physical and biological features essential to the conservation of the southern DPS of eulachon. However, because upslope and upstream activities can impact critical habitat, we chose to use the watershed (specifically, individual 5th field hydrologic units as designated by the U.S. Geological Survey) as our assessment area for economic impacts (see the draft Economic Analysis Report [NMFS 2010c] for definition of the 5th field hydrologic units and more information). This approach allowed us to most effectively consider the conservation value of the different areas when balancing conservation benefits of designation against economic benefits of exclusion. Where we considered impacts on Indian lands, however, we instead used a delineation of "particular" areas based on ownership or control of the area. Specifically, these particular areas consisted of occupied freshwater and estuarine areas that overlap with Indian lands. (We defined Indian lands in accordance with our past practice, as described in the Draft Eulachon Section 4(b)(2) Report [NMFS 2010d].) This approach allowed us to consider impacts and benefits associated with tribal land ownership and management by Indian tribes. In the future, if we consider impacts and benefits of designation associated with lands covered by a habitat conservation plan (HCP), we will also use a delineation of "particular" areas based on ownership or control of the area.

Benefits of Designation

The primary benefit of designation is the protection afforded under the ESA section 7 requirement that all Federal agencies ensure their actions are not likely to destroy or adversely modify designated critical habitat. This type of benefit is sometimes referred to as an incremental benefit because the protections afforded to the species from critical habitat designation are in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the continued existence of the species. In addition, the designation may enhance the conservation of habitat by informing the public about areas and features important to species conservation. This may help focus and contribute to conservation efforts for eulachon and their habitats.

With sufficient information, it may be possible to monetize these benefits of designation by first quantifying the benefits expected from an ESA section 7 consultation and translating that into dollars. We are not aware, however, of any available data to monetize the benefits of designation (*e.g.,* estimates of the monetary value of the physical and biological features within specific areas that meet the definition of critical habitat, or of the monetary value of general benefits such as education and outreach). In an alternative approach that we have commonly used in the past, we qualitatively assessed the benefit of designation for each of the specific areas identified as meeting the definition of critical habitat for the southern DPS. Our qualitative consideration began with an evaluation of the conservation value of each area. We considered a number of factors to determine the conservation value of an area, including the quantity and quality of physical or biological features, the relationship of the area to other areas within the DPS, and the significance to the DPS of the population occupying that area.

To evaluate the quantity and quality of features of the specific areas, we considered existing information on the consistency of spawning in each area, the typical size of runs in the area, and the amount of habitat available to and used by eulachon in the area. We found that eulachon habitat and habitat use varies widely among the areas, and may vary within the same area across different years. It is difficult to identify differences between the areas that could be driving variation in run size and frequency, and variation in habitat use. Eulachon spawn in systems as large as the Columbia River (largest river in the Pacific Northwest), and as small as Tenmile Creek (a watershed of 60 km^2 [23 mi^2]). While some rivers consistently produce large spawning runs of eulachon (*e.g.,* the Columbia and Cowlitz Rivers), spawning can be sporadic in others (*e.g.* Grays, Kalama, Lewis, Sandy, and Quinault Rivers). Still other areas, either currently or in the past, produce small yet consistent runs of eulachon (*e.g.,* Tenmile Creek and Elwha River).

Another factor we considered in evaluating the conservation value of the specific areas is the geographic distribution of the areas. Nearly the entire production of southern DPS eulachon in the conterminous United States originates in the 14 specific areas we have identified. These specific areas are widely distributed across the geographic extent of the DPS. Compared to salmon, steelhead, and other anadromous fishes, these relatively small areas historically produced a very large biomass of eulachon. The loss of any one of these areas could potentially leave a large gap in the spawning distribution of the DPS, and the loss to eulachon production could represent a significant impact on the ability of the southern DPS to survive and recover. Utilizing a diversity of stream/estuary sizes across a wide geographic area can be a useful strategy to buffer the species against localized environmental catastrophes (such as the Mount St. Helens eruption of May 18, 1980). For the above reasons, we conclude that all of the specific areas have a high conservation value.

There are many Federal activities that occur within the specific areas that could impact the conservation value of these areas. Regardless of designation, Federal agencies are required under Section 7 of the ESA to ensure these activities are not likely to jeopardize the continued existence of the southern DPS of eulachon. If the specific areas are designated as critical habitat, Federal agencies will additionally be required to ensure their actions are not likely to adversely modify the critical habitat. We grouped the potential Federal activities that would be subject to this additional protection into several broad categories: Dams and water supply, agriculture, transportation, forest management, mining, in-water construction and restoration, water quality management/monitoring, and other activities. (The Draft Economic Analysis [NMFS, 2010c] includes a detailed description of the industry sectors associated with these activities).

The benefit of designating a particular area depends upon the likelihood of a section 7 consultation occurring in that area and the degree to which a consultation would yield conservation benefits for the species. Based on past consultations for other migratory fish species, we estimated that a total of 37.5 actions would require section 7 consultation annually within the particular areas being considered for eulachon critical habitat designation (NMFS, 2010c). The most common activity type subject to consultation would be in-stream work (estimated 13.2 consultations annually), followed by forest management (estimated 6.7 consultations annually) and transportation projects (estimated 6.2 consultations annually). (A complete list of the estimated annual actions, divided by particular area, is included in the Draft Economic Analysis [NMFS, 2010c]). These activities have the potential to adversely affect water quality, sediment quality, substrate composition, or migratory corridors for eulachon. Consultation would yield conservation benefits for the species by preventing or ameliorating such habitat effects.

Impacts of Designation

Section 4(b)(2) of the ESA provides that the Secretary shall consider "the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat." The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies must ensure their actions are not likely to jeopardize the species' continued existence. The true impact of designation is the extent to which Federal agencies modify their actions to ensure their actions are not likely to destroy or adversely modify the critical habitat of the species, beyond any modifications they would make because of listing and the jeopardy requirement. Additional impacts of designation include state and local protections that may be triggered as a result of the designation.

In determining the impacts of designation, we predicted the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification prohibition, beyond the changes predicted to occur as a result of listing and the jeopardy provision. In critical habitat designations for salmon and steelhead (70 FR 52630; September 2, 2005) and for Southern Resident killer whales (71 FR 69054; November 29, 2006), we considered the "coextensive" impact of designation, in accordance with a Tenth Circuit Court decision (*New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001)). More recently, however, several courts (including the 9th Circuit Court of Appeals in *Arizona Cattlegrowers* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010); *Homebuilders Association of Northern California* v. *U.S. Fish and Wildlife,* 616 F.3d 983 (9th Cir. 2010)) have approved an approach that examines only the incremental impact of designation (see also: *Cape Hatteras Access Preservation Alliance* v. *Norton,* 344 F. Supp. 2d 1080 (D.DC 2004)). In more recent critical habitat designations, both NMFS and the USFWS have considered the incremental impact of critical habitat designation (for example, NMFS' designation of critical habitat for the Southern DPS of green sturgeon (74 FR 52300; October 9, 2009); U.S. Fish and Wildlife's designation of critical habitat for the Oregon chub (75 FR 11031; March 10, 2010)). Consistent with this more recent practice, we estimated the incremental impacts of designation, beyond the impacts that would result from the listing and jeopardy provision.

To determine the impact of designation, we examined what the state of the world would be with and without the designation of critical habitat for eulachon. The "without critical habitat" scenario represents the baseline for the analysis. It includes process requirements and habitat protections already afforded eulachon under its Federal listing or under other Federal, state, and local regulations. Such regulations include protections afforded eulachon habitat from other co-occurring ESA listings and critical habitat designations, such as for Pacific salmon and steelhead (70 FR 52630; September 2, 2005), North American green sturgeon (74 FR 52300; October 9, 2009), and bull trout (75 FR 63898; October 18, 2010) (see the Draft Economic Analysis for Eulachon (NMFS, 2010c) for examples of protections for other species that would benefit eulachon). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for eulachon. The primary impacts of critical habitat designation we found were: (1) The additional administrative effort of including a eulachon critical habitat analysis in section 7 consultations, (2) the project modifications required solely to avoid destruction or adverse modification of eulachon critical habitat, and (3) the perception of Indian tribes that designation of Indian lands is an unwarranted intrusion into tribal sovereignty and self-governance.

Economic Impacts

To quantify the economic impact of designation, we employed the following three steps:

(1) Define the geographic study area for the analysis, and identify the units of analysis (the "particular areas"). In this case, we defined 5th field hydrologic units that encompass occupied stream reaches as the study area.

(2) Identify potentially affected economic activities and determine how management costs may increase due to the designation of eulachon critical habitat, both in terms of project administration and project modification.

(3) Estimate the economic impacts associated with these changes in management.

We estimated a total annualized incremental administrative cost of approximately $500,000 for designating the 14 specific areas as eulachon critical habitat. The greatest costs are associated with dams and water supply, mining, and forest management activities (see NMFS, 2010c for more details). The Lower Mad River and Columbia River—Hayden Island 5th field hydrologic units have the largest estimated annual impacts ($63,500 and $33,300), due to mining activities and water supply activities, respectively (NMFS, 2010c). For 5th field hydrologic units other than the lower Mad River and Columbia River—Hayden Island, we estimate the incremental impacts of critical habitat designation would be less than $30,000/year.

For the second category of impacts, we identified three areas where critical habitat designation for eulachon might result in modifications to activities beyond those already resulting from the ESA listing of eulachon. Although we could not quantify the economic impacts, we anticipate these costs would be small, for the reasons described below.

(1) *Disposal of dredge material in the Lower Columbia River.* Eulachon spawning habitat has the potential to be modified by the disposal of dredge material in the Lower Columbia River, particularly if material is disposed in shallow water. If we conclude that disposing of dredge material in shallow water could destroy or adversely modify critical habitat, the U.S. Army Corps of Engineers (USACE) or the party seeking disposal may need to find alternative disposal sites, thereby incurring additional project costs. Because disposal of dredge material in shallow water is already quite limited in the Lower Columbia River and its cost is already relatively high, requiring another disposal method may have minimal added costs.

(2) *Elwha River Dam removal.* The Elwha and Glines Canyon dams, on the Elwha River, are scheduled for removal beginning in early 2011. Because protections are already in place to reduce the impact of the project on salmonid habitat, consideration of eulachon critical habitat is unlikely to result in recommendations to change the project, except possibly recommendations to make slight changes to the timing of the dam removals. If that were the case, such timing changes would likely have small associated costs.

(3) *Mayfield Dam flow regime.* As outlined in the eulachon final listing determination (75 FR 13012; March 18, 2010), dams and water diversions are moderate threats to eulachon in the Columbia River Basin. To benefit

salmon and steelhead species, Tacoma Power Company currently follows a flow regime for Mayfield Dam on the Cowlitz River. If we conclude the existing flow regime could destroy or adversely modify eulachon critical habitat, Tacoma Power Company may need to change the timing or amount of water releases. This could change the timing of energy production, with an associated decrease in revenue from energy sales. We would expect any such decreases to be small because the effect would be to change the timing of energy production and not the total amount of energy produced.

Without conducting a complete analysis on a specific project, it is difficult to evaluate the extent to which NMFS might recommend changes in any of these activities to avoid destroying or adversely modifying critical habitat. Any changes required solely to avoid destroying or adversely modifying critical habitat would be an impact of designation.

Impacts to National Security

Department of Defense lands do not overlap with, nor are adjacent to, any areas proposed for designation as critical habitat for the southern DPS. Thus, there would be no direct impacts to national security if any of the specific areas were designated as critical habitat.

Other Relevant Impacts—Impacts to Tribal Sovereignty and Self-Governance

We identified three rivers with areas under consideration for critical habitat designation that overlap with Indian lands—the Elwha River and Quinault River in Washington, and the Klamath River in California. The Federally-recognized tribes (74 FR 40218; August 11, 2009) potentially affected are the Lower Elwha Tribe, the Quinault Tribe, the Yurok Tribe, and the Resighini Rancheria. In addition to the economic impacts described above, designating these tribes' Indian lands would have an impact on Federal policies promoting tribal sovereignty and self-governance. The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the U.S. Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian tribes or have been set aside for tribal use. These lands are managed by Indian tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests (recently confirmed by Presidential Memorandum; 74 FR 57879; November 9, 2009). In addition to Executive Order 13175, we have Department of Commerce direction, via Secretarial Order 3206, stating that Indian lands shall not be designated as critical habitat, nor areas where the "tribal trust resources * * * or the exercise of tribal rights" will be impacted, unless such lands or areas are determined "essential to conserve a listed species." In such cases we "shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by designating only other lands."

Designation would also have impacts to NMFS' relationship with the affected tribes. In the decision *Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that a positive working relationship with Indian tribes is a relevant impact that can be considered when weighing the relative benefits of a critical habitat designation. We contacted the governments of each of the potentially affected tribes to determine what impact a critical habitat designation on Indian lands would have on the working relationship between NMFS and the tribes. All four advised us that they would view critical habitat designation on their lands as an unwanted intrusion, which would have a negative impact on tribal sovereignty and self-governance and on the relationship between the tribe and the agency. This response was consistent with responses NMFS has received from Indian tribes in past designations (for example, the designation of critical habitat for 12 ESUs of West Coast salmon and steelhead (70 FR 52630; September 2, 2005)).

Other Relevant Impacts—Impacts to Landowners With Contractual Commitments to Conservation

Conservation agreements with non-Federal landowners (*e.g.,* HCPs) enhance species conservation by extending species' protections beyond those available through section 7 consultations. We have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species' conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Section 10(a)(1)(B) of the ESA authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The ESA specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such an HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the likelihood of the survival and recovery of the species.

In previous critical habitat designations, we have exercised discretion to exclude some (but not all) lands covered by an HCP from designation (*e.g.,* for Pacific salmon (70 FR 52630; September 2, 2005)), after concluding that benefits of exclusion outweighed the benefits of designation. For lands covered by an HCP, the benefits of designation typically arise from section 7 protections as well as enhanced public awareness. The benefits of exclusion generally include relieving regulatory burdens on existing conservation partners, maintaining good working relationships with them (thus enhancing implementation of existing HCPs), and encouraging the development of new partnerships.

There are two existing HCPs that overlap areas proposed as critical habitat for the southern DPS of eulachon; the Green Diamond Timber HCP (covering the company's operations in northern California, including portions of the Klamath River), and the Humboldt Bay Municipal Water District HCP (covering their operations in the Mad River, California). Neither of these HCPs currently address conservation of eulachon, and it is unclear what, if any, conservation benefits they might provide to eulachon. We will seek comments and information specific to these HCPs and determine by the time of the final rule if, as in some past designations, the benefits of excluding these HCP areas outweigh the conservation benefits of designation.

Balancing Benefits of Designation Against Benefits of Exclusion

The following section balances the benefits of avoiding economic impacts and impacts to tribal sovereignty and self-governance against the incremental and general benefits of designation. We determine whether the benefits of exclusion outweigh the benefits of designation and make recommendations for exclusion.

Economic Exclusions

As described above, the economic benefits of excluding particular areas are small, for a total of about $500,000. Also as described above, we consider all 14 particular areas meeting the definition of critical habitat to have a high conservation value and a high benefit of designation. When we listed eulachon as a threatened species we cited, among other reasons, the present or threatened destruction, modification, or curtailment of its habitat. Identified threats to eulachon habitat include climate-induced change to freshwater habitats; dams and water diversions (particularly in the Columbia and Klamath Rivers); and degraded water quality. Designating these areas as critical habitat will enhance our ability to address some of these threats through section 7 consultations and through public outreach and education. We conclude that the economic benefits of excluding each particular area do not outweigh the conservation benefits of designating each particular area as critical habitat, given the following considerations: (1) The economic impact of designating all areas is small; (2) eulachon are likely to become endangered in the foreseeable future; (3) threats to freshwater habitat were a primary concern leading to our decision to list the species as threatened; (4) there are a limited number of spawning areas available throughout the coast-wide range of eulachon; and (5) designation will enhance the ability of a section 7 consultation to protect the habitat through the identification of areas of particular concern and through the added protection of the adverse modification provision.

Indian Lands Exclusions

The eulachon critical habitat Section 4(b)(2) report (NMFS, 2010d) details our consideration of excluding Indian lands in this critical habitat designation. The discussion here summarizes that consideration. As described above, designating critical habitat on Indian lands would have economic impacts. It is difficult to quantify those impacts (and therefore the benefit of exclusion), for the Lower Elwha tribe because their lands do not encompass the entire area that is being considered for designation. The effects of many types of actions on their lands would also affect areas downstream that are not excluded from designation. Therefore, a section 7 consultation would still need to consider the downstream effects on critical habitat. Administrative costs of designation would still be incurred, along with any costs associated with project modifications. The Quinault Tribe's lands encompass nearly the entire watershed of the specific area identified, thus exclusion would relieve Federal agencies of the administrative costs of considering effects of actions on designated critical habitat. The boundaries of the Yurok Indian Reservation encompass the entire specific area that represents critical habitat on the Klamath River. However there is some uncertainty as to which particular areas within it meet the above definition of Indian lands. For this analysis we have assumed, based on initial discussions with the Tribe that the entire specific area under consideration qualifies as Indian land. We estimated a total annualized incremental administrative cost of approximately $500,000 for designating all 14 specific areas as eulachon critical habitat. The exclusion of Indian Lands from critical habitat designation would decrease the total annualized incremental administrative cost by approximately $39,500. With Indian Lands excluded, the total annualized incremental administrative cost of designating eulachon critical habitat would be approximately $460,500.

In addition to the economic impact, designation would have an impact on Federal policies promoting tribal sovereignty and self-governance (*e.g.,* Executive Order 13175), and on the relationship between NMFS and each of the tribes (*e.g.,* Secretarial Order 3206) because of their perception that designation is an intrusion on tribal sovereignty and self-governance. The benefit of excluding Indian lands would be to avoid these impacts.

Balanced against these benefits of exclusion, a benefit of designating the Indian lands would be to achieve the added protection from ESA section 7's critical habitat provisions. This protection would apply to all Federal activities, which we expect would include dam operations and water supply, forest management, instream construction, mining, transportation projects, and habitat restoration. As described above, section 7 consultations for Federal actions on lands of the Lower Elwha Tribe may still need to consider designated critical habitat elsewhere in the watershed, thus many of the benefits of a section 7 consultation could still apply even if the Indian lands were excluded. In contrast, if Indian lands on the Quinault River and Klamath River were excluded, section 7 consultations would not include consideration of eulachon critical habitat.

Another benefit of designation would be to educate the public about the importance of these Indian lands to eulachon conservation. Because these are not public or private lands, and because the tribes themselves are keenly aware of the importance of their lands to eulachon conservation, we consider the education benefit of designating these Indian lands to be low.

Quinault Indian Nation Lands. In the Quinault River, exclusion of Indian lands would result in 100 percent of the area being excluded. An ESA section 7 consultation in this area would not consider adverse modification of critical habitat. In a public comment letter submitted in response to the designation of critical habitat for the bull trout, the Quinault Indian Nation (QIN) state that a Forest Management Plan (FMP), on which the USFWS prepared a programmatic biological opinion for bull trout, should provide adequate protection for the bull trout. The QIN intend to submit a similar comment in response to the designation of critical habitat for the eulachon (Quinault Indian Nation 2010). The FMP takes into account significant restrictions on in-water construction activities imposed by the State of Washington (USFWS 2003; Washington State Law, Chapter 77.55). Project modifications specific to the bull trout included in the biological opinion for the FMP include requirements that in-water or near-stream activities may only be conducted during the specific timeframes outlined in the FMP, construction of new roads is to be minimized "to the maximum extent practicable," and construction of fill roads is allowable only when absolutely necessary. These project modifications would likely benefit eulachon habitat as well by limiting runoff which can adversely affect water quality, sediment quality, and substrate composition.

Exclusion of the 4.8 km (3.0 mi) of the Quinault River that runs through tribal lands would have the benefit of promoting Federal policies regarding tribal sovereignty and self-governance (*e.g.,* Executive Order 13175). It would also have the benefit of promoting a positive relationship between NMFS and the tribe (in accordance with Secretarial Order 3206), with a very

small reduction in the benefits of designation (primarily the loss of section 7 consultation to consider adverse modification of critical habitat). The current FMP provides some protection for eulachon habitat and will provide a structure for future coordination and communication between the QIN, USFWS, and NMFS. For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Lower Elwha Tribal Lands. In the Lower Elwha River, exclusion of tribal lands would result in 1.3 km (0.8 mi) of the lower Elwha River being excluded, which represents about 16 percent of the total 7.9 km (4.9 mi) of habitat. As explained above, Federal agencies would still need to consult on the effects of their actions on the designated critical habitat elsewhere in the river. Exclusion of the 1.3 km (0.8 mi) of the lower Elwha River that runs through tribal lands would have the benefit of promoting Federal policies regarding tribal sovereignty and self-governance (*e.g.,* Executive Order 13175). It would also have the benefit of promoting a positive relationship between NMFS and the tribe (in accordance with Secretarial Order 3206), with a very small reduction in the benefits of designation (primarily, the loss of section 7 consultation to consider adverse modification of critical habitat). For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Resighini Rancheria Land. The tribal lands of the Resighini Rancheria include approximately 0.5 km (0.3 mi) along the Klamath River, within the specific area of critical habitat for eulachon. Exclusion of this land would account for approximately 3 percent of the specific habitat of southern DPS eulachon in the Klamath River. Exclusion of the 0.5 km (0.3 mi) of the Klamath River that runs through tribal lands would have the benefit of promoting Federal policies regarding tribal sovereignty and self-governance. It would also have the benefit of promoting a positive relationship between NMFS and the tribe, with a very small reduction in the benefits of designation. For these reasons, we conclude that the benefits of exclusion outweigh the benefits of designation.

Yurok Tribal Lands. Yurok Tribal Lands: The boundaries of the Yurok Indian Reservation encompass the 17.5 km (10.9 mi) on the Klamath River that represent the specific area occupied by eulachon on that river. However, land ownership within the reservation boundary includes a mixture of Federal, State, tribal and private ownerships.

As managers of the Klamath River fisheries and their resources, the Tribe oversees and protects fish and fish habitat through various land and water management practices, plans, and cooperative efforts. Tribal forest practices and land management are guided by a Forest Management Plan (FMP), a primary objective of which is to protect and enhance tribal trust fisheries. The Tribe has an established water quality control plan on the Reservation (Yurok Tribe, 2004) with standards that have been approved by the Environmental Protection Agency (EPA). In conjunction with Federal, state and private partners, the Yurok Tribe has initiated a large-scale, coordinated watershed restoration effort in the Lower Klamath sub-basin to protect and improve instream, intertidal, and floodplain habitats that support viable, self-sustaining populations of native fishes. More recently, the Yurok Tribe fisheries program has implemented a eulachon monitoring study to determine the current abundance, and distribution of eulachon in the Klamath River.

We are proposing to exclude from designation all areas of the Klamath River based on an initial consideration of impacts on our working relationship with the Yurok Tribe. Although this decision is consistent with our previous critical habitat designation for Southern Oregon/Northern California Coasts coho salmon (64 FR 24049; May 5, 1999), it is less clear how well it reflects our more recent 4(b)(2) analyses used in 2005 to designate critical habitat for 19 salmon and steelhead DPSs (70 FR 52630; September 2, 2005). In that more recent approach we focused such exclusions on those Indian lands defined in the 1997 Secretarial Order 3206 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." Specifically, we excluded: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians.

During the time between this proposed rule and a final designation we will consult with the Tribe and other land managers in the lower Klamath Basin to determine how best to determine the benefits of designating or excluding particular areas within the Yurok Reservation boundary. As noted in a biological report supporting this designation, the eulachon habitat under consideration includes the lowermost 17.5 km (10.9 miles) of the Klamath River. Depending on the outcome of our consultations and a final 4(b)(2) analysis (informed by tribal input and public comments), our final rule may designate some or none of these occupied areas as critical habitat for this species.

Extinction Risk Due to Exclusions

Section 4(b)(2) limits our discretion to exclude areas from designation if exclusion will result in extinction of the species. The overwhelming majority of production for the southern DPS of eulachon occurs in the Columbia River (and tributaries) and the Fraser River in Canada (NMFS, 2010a). While abundance estimates are not available for the three rivers (Quinault, Elwha, and Klamath) that overlap Indian lands, the runs on these rivers are believed to be very small (NMFS, 2010a) and likely contribute only a small fraction to the total DPS abundance. Because the overall percentage of critical habitat on Indian lands is so small (5 percent of the total area identified) and the likelihood that eulachon production on these lands represents a very small percent of the total annual production for the DPS, we conclude that exclusion will not result in extinction of the southern DPS of eulachon.

Critical Habitat Designation

We propose to designate approximately 470.2 km (292.1 mi) of riverine and estuarine habitat in California, Oregon, and Washington within the geographical area occupied by the southern DPS of eulachon. The proposed critical habitat areas contain one or more physical or biological features essential to the conservation of the species that may require special management considerations or protection. We propose to completely exclude two areas (the Quinault River and the Klamath River) and portions of one other area (Elwha River) from designation for which the benefit of exclusion outweighs the benefit of inclusion (NMFS, 2010c). These areas include less than 23.6 km (14.7 mi) of riverine and estuarine habitat in California and Washington. We conclude that the exclusion of these areas will not result in the extinction of the southern DPS. We have not identified any unoccupied areas that are essential to conservation, and thus we are not proposing any unoccupied areas for designation as critical habitat at this time.

Lateral Extent of Critical Habitat

We describe the lateral extent of critical habitat units as the width of the stream channel defined by the ordinary high water line, as defined by the USACE in 33 CFR 329.11. The ordinary high water line on non-tidal rivers is defined as "the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas" (33 CFR 329.11(a)(1)). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, we define the width of the stream channel by its bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain (Rosgen, 1996) and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series (Leopold *et al.* 1992).

As discussed in previous critical habitat designations (*e.g.,* Pacific salmon and steelhead (70 FR 52630; September 2, 2005), North American green sturgeon (74 FR 52300; October 9, 2009)), the quality of aquatic and estuarine habitats within stream channels and bays and estuaries is intrinsically related to the adjacent riparian zones and floodplain, to surrounding wetlands and uplands, and to non-fish-bearing streams above occupied stream reaches. Human activities that occur outside of designated critical habitat can destroy or adversely modify the essential physical and biological features within these areas. In addition, human activities occurring within and adjacent to reaches upstream or downstream of designated stream reaches or estuaries can also destroy or adversely modify the essential physical and biological features of these areas. This designation will help to ensure that Federal agencies are aware of these important habitat linkages.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with us regarding any actions likely to jeopardize a species proposed for listing under the ESA, or likely to destroy or adversely modify proposed critical habitat, pursuant to section 7(a)(4). A conference involves informal discussions in which we may recommend conservation measures to minimize or avoid adverse effects. The discussions and conservation recommendations are to be documented in a conference report provided to the Federal agency. If requested by the Federal agency, a formal conference report may be issued; including a biological opinion prepared according to 50 CFR 402.14. A formal conference report may be adopted as the biological opinion when the species is listed or critical habitat designated, if no significant new information or changes to the action alter the content of the opinion.

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, we would evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a biological opinion or concurrence letter. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives (defined in 50 CFR 402.02) are alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of a consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or state lands requiring a permit from a Federal agency (*e.g.,* a Clean Water Act, Section 404 dredge or fill permit from USACE) or some other Federal action, including funding (*e.g.,* Federal Highway Administration funding for transportation projects). ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions on non-Federal and private lands that are not Federally funded, authorized, or carried out.

Activities That May Be Affected

ESA section 4(b)(8) requires in any proposed or final regulation to designate critical habitat an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect the proposed critical habitat and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. These include water and land management actions of Federal agencies (*e.g.,* U.S. Forest Service (USFS)), Bureau of Land Management (BLM), U.S. Army Corps of Engineers (USACE), U.S. Bureau of Reclamation (BOR), Natural Resource Conservation Service (NRCS), National Park Service (NPS), Bureau of Indian Affairs (BIA), the Federal Energy Regulatory Commission (FERC), and the Nuclear Regulatory Commission (NRC)) and related or similar Federally-regulated projects and activities on Federal lands, including hydropower sites licensed by the FERC; nuclear power sites licensed by the NRC; dams built or operated by the USACE or BOR; timber sales and other vegetation management activities conducted by the USFS, BLM and BIA; irrigation diversions authorized by the USFS and BLM; and road building and maintenance activities authorized by the USFS, BLM, NPS, and BIA. Other actions of concern include dredging and filling, mining, diking, and bank stabilization activities authorized or conducted by the USACE, habitat modifications authorized by the Federal Emergency Management Agency, and approval of water quality standards and pesticide labeling and use restrictions administered by the Environmental Protection Agency.

Private entities may also be affected by this proposed critical habitat designation if a Federal permit is

required, if Federal funding is received, or the entity is involved in or receives benefits from a Federal project. For example, private entities may have special use permits to convey water or build access roads across Federal land; they may require Federal permits to construct irrigation withdrawal facilities, or build or repair docks; they may obtain water from Federally funded and operated irrigation projects; or they may apply pesticides that are only available with Federal agency approval. These activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat for eulachon. Changes to some activities, such as the operations of dams and dredging activities, may be necessary to minimize or avoid destruction or adverse modification of proposed critical habitat. Transportation and utilities sectors may need to modify the placement of culverts, bridges, and utility conveyances (*e.g.,* water, sewer, and power lines) to avoid barriers to fish migration. Developments (*e.g.,* marinas, residential, or industrial facilities) occurring in or near streams, estuaries, or marine waters designated as critical habitat that require Federal authorization or funding may need to be altered or built in a manner to ensure that critical habitat is not destroyed or adversely modified as a result of the construction or subsequent operation of the facility. Questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat should be directed to NMFS (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governments and agencies, the scientific community, industry, non-governmental organizations, or any other interested party concerning the proposed designation and exclusions as well as the documents supporting this rulemaking. We are particularly interested in comments and information in the following areas: (1) Information describing the abundance, distribution, and habitat use of southern DPS eulachon, including marine areas; (2) Information on the identification, location, and the quality of physical or biological features which may be essential to the conservation of the species, including marine foraging sites; (3) Information regarding potential benefits of designating any particular area as critical habitat, including information on the types of Federal actions that may affect the area's physical and biological features; (4) Information regarding potential impacts of designating any particular area, including the types of Federal actions that may trigger an ESA section 7 consultation and the possible modifications that may be required of those activities; (5) Information regarding the benefits of excluding a particular area from critical habitat, including areas covered by an existing HCP, especially the Green Diamond Timber and Humboldt Bay Municipal Water District HCPs in northern California; (6) Current or planned activities in the areas proposed as critical habitat and costs of potential modifications to those activities due to critical habitat designation; and (7) Any foreseeable economic, national security, or other relevant impact resulting from the proposed designation. You may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Copies of the proposed rule and supporting documentation can be found on the NMFS Web site *http://www.nwr.noaa.gov.* We will consider all comments pertaining to this designation received during the comment period in preparing the final rule. Accordingly, the final decision may differ from this proposal.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed rule to designate critical habitat. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters. A public meeting has been scheduled for January 26, 2011 at the Doubletree Hotel, 1000 NE Multnomah Street, Portland, OR. Requests for additional public hearings must be made in writing (*see* **ADDRESSES**) by February 22, 2011.

Information Quality Act and Peer Review

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Pub. L. 106–554). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the IQA. The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. Two documents supporting this proposal to designate critical habitat for the southern DPS of eulachon are considered influential scientific information and subject to peer review. These documents are the draft Biological Report and draft Economic Analysis. We have distributed the draft Biological Report and draft Economic Analysis for independent peer review and will address any comments received in developing the final drafts of the two reports. Both documents are available on our Web site at *http://www.nwr.noaa.gov/,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (*see* **ADDRESSES**).

Classification

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility analysis (IRFA), which is part of the draft Economic Analysis. This document is available upon request (*see* **ADDRESSES**), via our Web site at *http://nwr.noaa.gov,* or via the Federal eRulemaking Web site at *http://www.regulations.gov.* The results of the IRFA are summarized below.

At the present time, little information exists regarding the cost structure and operational procedures and strategies in the sectors that may be directly affected by the potential critical habitat designation. In addition, given the short consultation history for eulachon, there is significant uncertainty regarding the activities that may trigger an ESA section 7 consultation or how those activities may be modified as a result of

consultation. With these limitations in mind, we considered which of the potential economic impacts we analyzed might affect small entities. These estimates should not be considered exact estimates of the impacts of potential critical habitat to individual businesses.

The impacts to small businesses were assessed for the following eight broad categories of activities: Dams and water supply, agriculture and grazing, transportation, forest management, mining, in-water construction and restoration, water quality management/monitoring (and other activities resulting in non-point pollution), and other activities. Small entities were defined by the Small Business Administration size standards for each activity type. The majority (approximately 97 percent) of entities affected within each specific area would be considered a small entity. A total of 540 small businesses involved in the activities listed above would most likely be affected by the proposed critical habitat designation. Total annualized impacts to small entities are conservatively assumed to be $459,000, or approximately 99.5 percent of total incremental impacts anticipated as a result of this rule.

We estimated the annualized costs associated with section 7 consultations incurred per small business under two different scenarios. These scenarios are intended to provide a measure of the range of potential impacts to small entities given the level of uncertainty referred to above. Under the first scenario the analysis estimated the number of small entities located within areas affected by the proposed designation (approximately 540), and assumes that incremental impacts are distributed evenly across all entities in each affected industry. Under this scenario, a small entity may bear costs up to $3,550, representing between < 0.01 and 0.10 percent of average revenues (depending on the industry). Under the second scenario, the analysis assumes the costs of each anticipated future consultation are borne by a distinct small business most likely to be involved in a section 7 consultation (approximately 38 entities). Under this scenario, each small entity may bear costs of between $1,330 and $162,000, representing between 0.01 and 4.69 percent of average annual revenues, depending on the industry.

In accordance with the requirements of the RFA (as amended by SBREFA of 1996) this analysis considered various alternatives to the critical habitat designation for the southern DPS. The alternative of not designating critical habitat for the southern DPS of eulachon was considered and rejected because such an approach does not meet the legal requirements of the ESA. We considered the alternative of designating all specific areas (*i.e.,* no areas excluded); however, for three areas (all of the Quinault and Klamath Rivers and part of the Elwha River), the benefits of exclusion outweighed the benefits of including them in the designation. Thus, NMFS also considered the alternative of designating all specific areas, but excluding these areas. This alternative helps to reduce the number of small businesses potentially affected from 571 to 540, and the total potential annualized economic impact to small businesses would be reduced from $498,000 to $459,000.

Executive Order 13211

On May 18, 2001, the President issued an executive order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

We have considered the potential impacts of this action on the supply, distribution, or use of energy and find the designation of critical habitat will not have impacts that exceed the thresholds identified above (NMFS, 2010c).

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon state, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to state, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the state, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.)

"Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of critical habitat does not impose a legally binding duty on non- Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non- Federal entities which receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(b) Due to the existing protection afforded to the proposed critical habitat from existing critical habitat for salmon and steelhead (70 FR 52630; September 2, 2005), Southern DPS of green sturgeon (74 FR 52300; October 9, 2009), and/or bull trout (70 FR 56212; September 26, 2005), we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

Under Executive Order 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. We do not expect the proposed critical habitat designation to impose additional burdens on land use or affect property values. Additionally, the proposed critical habitat designation does not preclude the development of Habitat Conservation Plans and issuance of incidental take permits for non-Federal actions. Owners of areas included within the proposed critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of listed southern DPS eulachon.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1456) requires that all Federal activities that affect the land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. We have determined that this proposed designation of critical habitat is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of California, Oregon, and Washington. The determination has been submitted for review by the responsible agencies in the aforementioned states.

Federalism

In accordance with Executive Order 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of this proposed critical habitat designation with, appropriate state resource agencies in California, Oregon, and Washington. The proposed designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the essential features of the habitat necessary for the survival of the southern DPS of eulachon are specifically identified. It may also assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Civil Justice Reform

The Department of Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988 We are proposing to designate critical habitat in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the essential features within the designated areas to assist the public in understanding the habitat needs of southern DPS eulachon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act of 1969 (NEPA)

We have determined that an environmental analysis as provided for under NEPA is not required for critical habitat designations made pursuant to the ESA. *See Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If NMFS issues a regulation with tribal implications (defined as having 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) we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

Pursuant to Executive Order 13175 and Secretarial Order 3206, we consulted with the affected Indian Tribes when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands or the exercise of tribal rights. All of the tribes we consulted expressed concern about the intrusion into tribal sovereignty that critical habitat designation represents. The Secretarial Order defines Indian lands as "any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or (2) held by an Indian Tribe or individual subject to restrictions by the United States against alienation." Our conversations with the tribes indicate that they view the designation of Indian lands as an unwanted intrusion into tribal self-governance, compromising the government-to-government relationship that is essential to achieving our mutual goal of conserving threatened and endangered salmonids.

For the general reasons described in the Other Relevant Impacts—Impacts to Tribal Sovereignty and Self-Governance section above, the draft ESA 4(b)(2) analysis has led us to propose the exclusion of all Indian lands in our proposed designation for the southern DPS of eulachon. Consistent with other proposed exclusions, any exclusion in the final rule will be made only after consideration of all comments received.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://www.nwr.noaa.gov/* and is available upon request from the NMFS office in Portland, Oregon (*see* **ADDRESSES.**)

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: December 29, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 226, title 50 of the Code of Federal Regulations as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Add § 226.222, to read as follows:

§ 226.222 Critical habitat for the southern Distinct Population Segment of eulachon. (Thaleichthys pacificus).

Critical habitat is designated for the southern Distinct Population Segment of eulachon (southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance only and not as a definitive source for determining critical habitat boundaries. In freshwater areas, critical habitat includes the stream channel and a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. In estuarine areas, critical habitat includes tidally influenced areas as defined by the elevation of mean higher high water.

(a) *Critical habitat boundaries.* Critical habitat is designated to include the following areas in California, Oregon, and Washington:

(1) Mad River, California. From the mouth of the Mad River (40°57′37″ N./124°7′36″ W.) upstream to the confluence with the North Fork Mad River (40°52′30″ N./123°59′26″ W.).

(2) Redwood Creek, California. From the mouth of Redwood Creek (41°17′33″ N./124°5′30″ W.) upstream to the confluence with Prairie Creek (41°17′59″ N./124°3′00″ W.).

(3) Umpqua River, Oregon. From the mouth of the Umpqua River (43°40′8″ N./124°12′36″ W.) upstream to the confluence with Mill Creek (43°39′20″ N./123°52′34″ W.).

(4) Tenmile Creek, Oregon. From the mouth of Tenmile Creek (44°13′34″ N./124°6′45″ W.) upstream to the Highway 101 bridge crossing (44°13′27″ N./124°6′35″ W.).

(5) Sandy River, Oregon. From the confluence with the Columbia River upstream to the confluence with Gordon Creek (45°29′45″ N./122°16′41″ W.).

(6) Columbia River, Oregon and Washington. From the mouth of the Columbia River (46°15′9″ N./124°4′32″ W.) upstream to Bonneville Dam (45°38′40″ N./121°56′27″ W.).

(7) Grays River, Washington. From the confluence with the Columbia River upstream to Covered Bridge Road (46°21′17″ N./123°34′52″ W.).

(8) Elochoman River, Washington. From the confluence with the Columbia River to Washington State Highway 4 bridge crossing (46°13′44″ N./123°23′39″ W.).

(9) Cowlitz River, Washington. From the confluence with the Columbia River upstream to the Cowlitz Salmon Hatchery barrier dam (46°30′45″ N./122°37′60″ W.).

(10) Kalama River, Washington. From the confluence with the Columbia River upstream to the bridge at Modrow Road (46°2′50″ N./122°50′15″ W.).

(11) Lewis River, Washington. From the confluence with the Columbia River upstream to Merwin Dam (45°57′24″ N./122°33′21″ W.).

(12) Elwha River, Washington. From the mouth of the Elwha River (48°8′52″ N./123°34′5″ W.) upstream to Elwha Dam (48°5′42″ N./123°33′22″ W.).

(b) Physical or biological features essential for conservation. The physical or biological features essential for conservation of southern DPS eulachon are:

(1) Freshwater spawning and incubation sites with water flow, quality and temperature conditions and substrate supporting spawning and incubation.

(2) Freshwater and estuarine migration corridors free of obstruction and with water flow, quality and temperature conditions supporting larval and adult mobility, and with abundant prey items supporting larval feeding after the yolk sac is depleted.

(3) Nearshore and offshore marine foraging habitat with water quality and available prey, supporting juveniles and adult survival.

(c) Indian lands. Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:

(1) Lower Elwha Tribe, Washington;

(2) Quinault Tribe, Washington;

(3) Yurok Tribe, California; and

(4) Resighini Rancheria, California.

(d) Maps of proposed critical habitat for the southern DPS of eulachon follow:

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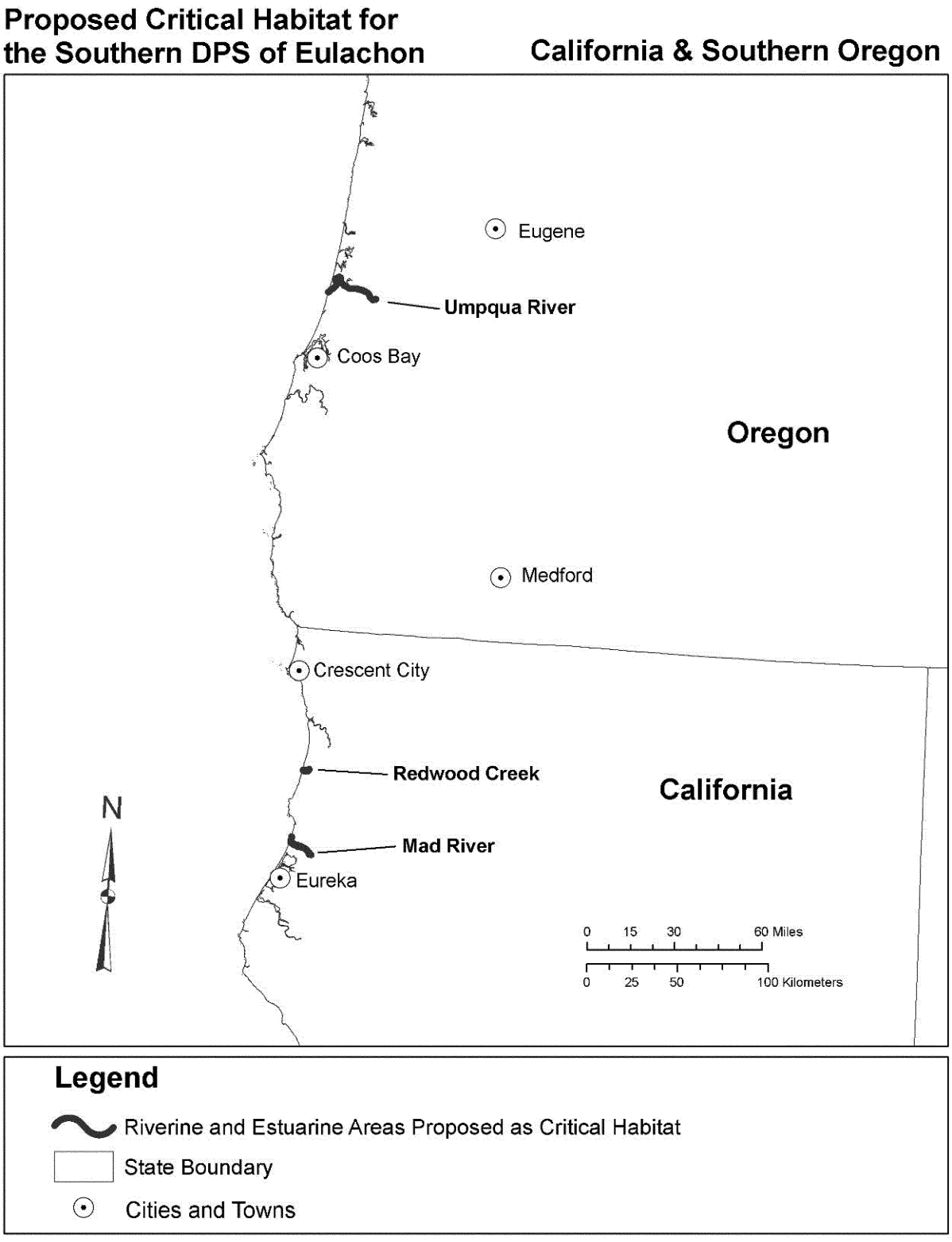
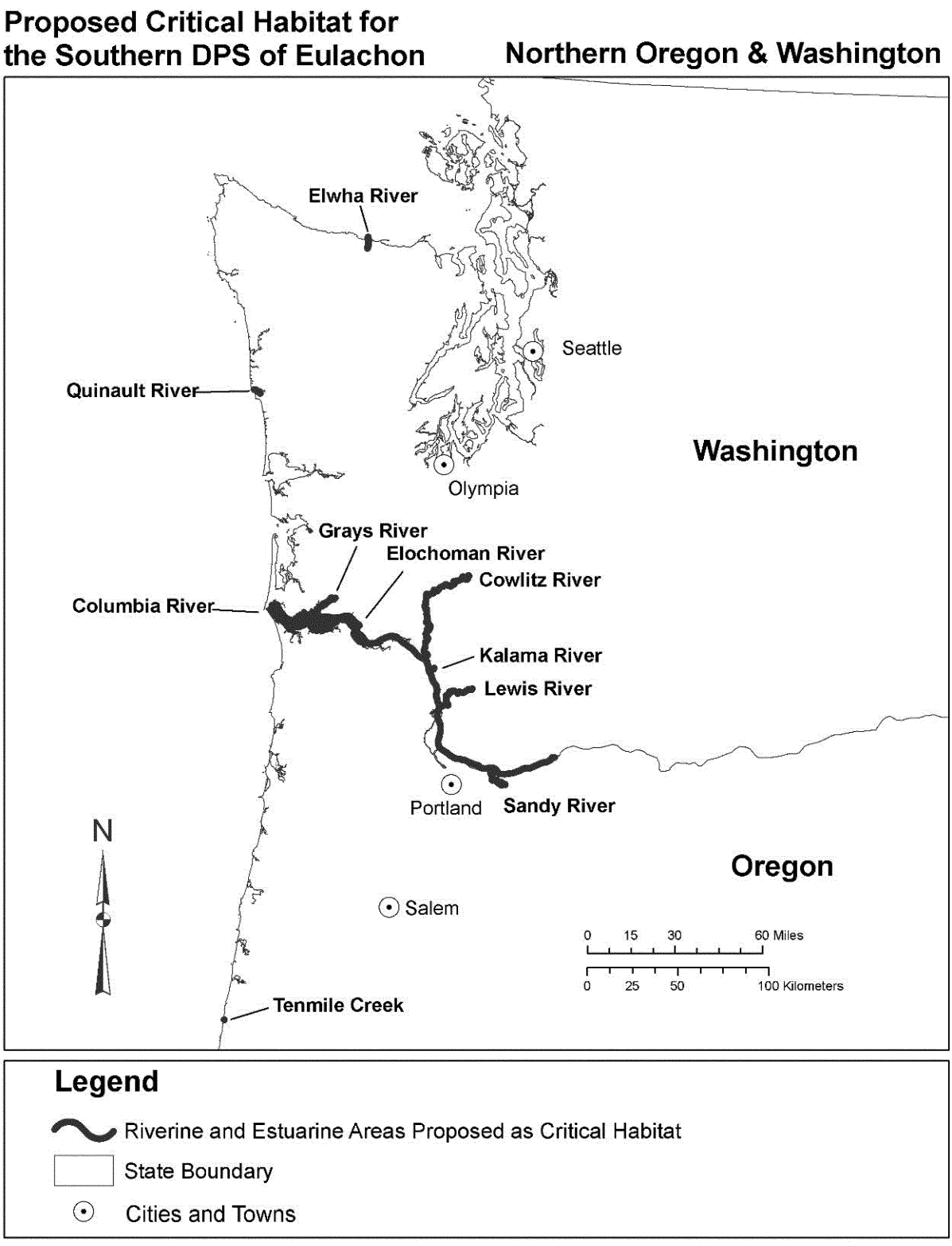

Proposed Critical Habitat for the Southern DPS of Eulachon
California & Southern Oregon
Eugene
Umpqua River
Coos Bay
Oregon
Medford
Crescent City
Redwood Creek
California
N
Mad River
Eureka
0 15 30 60 Miles
0 25 50 100 Kilometers
Legend
Riverine and Estuarine Areas Proposed as Critical Habitat
State Boundary
Cities and Towns



[FR Doc. 2010–33314 Filed 1–4–11; 8:45 am]
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Notices

Federal Register
Vol. 76, No. 3
Wednesday, January 5, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Eurasian Oil and Gas Suppliers Mission to Almaty, Kazakhstan Ankara and Istanbul Turkey

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an industry-specific Oil & Gas Equipment and Services Mission to Kazakhstan and Turkey from June 20–24, 2011. Led by a senior Department of Commerce official, the mission will include representatives from a variety of U.S. firms specializing in the following product areas:

- Offshore/onshore oil and gas drilling and production equipment and services;
- Turbines, compressors and pumps for pipeline applications;
- Measurement and process control equipment for pipeline operations;
- Industrial automation, control and monitoring systems and other equipment and services for refineries, gas processing and petrochemical plants;
- Seismic processing and interpretation;
- Petroleum software development;
- Sulfur removal and disposal technologies;
- Well stimulation;
- Field abandonment services;
- Geothermal exploration, drilling, production and processing equipment and services; and
- Engineering and industrial construction companies.

Mission participants will be introduced to international agents, distributors, and end-users whose capabilities and services are targeted to each participant's needs. This mission will contribute to National Export Initiative goals through increased sales of oil and gas equipment/services in Turkey and Kazakhstan.

Participants will have an opportunity to meet with major international exploration and production companies and integrated service providers operating in Istanbul and Ankara, Turkey and Almaty, Kazakhstan. The mission will also include matchmaking with potential local partners and visiting sites of commercial interest. We are targeting 15 U.S. company representatives responsible for their corporate activity in Eurasia.

Commercial Setting—Turkey

Turkey, the world's 17th largest economy, is a major consumer of oil and gas. Although oil and gas produced in Turkey currently meets only a small fraction of the country's demand, there are significant prospects offshore in the Black Sea, and onshore in the Thrace region of western Turkey, and the East and Southeast. Between 2002 and 2009, 747 wells were drilled. In 2009 alone, $716 million was spent for oil and gas exploration and production in Turkey. As of today, only 20% of onshore prospects and 1% of offshore prospects have been explored. Chevron and ExxonMobil announced important exploration efforts in 2009 and 2010 in the Western Black Sea Region. Companies offering technologies and services for exploration and production can also find a market in the geothermal sector: Turkey ranks No.1 in Europe and 7 in the world in terms of geothermal power potential.

Turkey is a crucial corridor between the energy-rich Caspian and Middle East and Europe. The planned 3,300 km NABUCCO natural gas pipeline will link Caspian and Middle Eastern suppliers through Turkey to Central Europe, and will create major opportunities for U.S. companies. The total capacity of the pipeline will be 25 to 31 BCMA. Estimated investment costs including financing costs for the entire pipeline system will be well over $10 billion. Other potential pipeline projects include Italy—Greece—Turkey Interconnector (ITGI) and Trans Adriatic Pipeline (TAP).

In addition to oil and gas exploration and production activities and pipelines, new refinery and petrochemical plants are planned over the next decade, with a projected increase of over 90% in refining capacity by 2019, to over 1.3 million BPD.

Turkey's oil and gas market provides excellent opportunities for U.S. companies within the following product areas:

1. Offshore and onshore oil and gas exploration and production equipment and services,
2. 2–D and 3–D Seismic equipment and engineering services,
3. Shale gas exploration and production equipment and services,
4. Horizontal Drilling equipment and services,
5. Petrochemical processing equipment and services,
6. Geothermal energy exploration and drilling equipment and engineering services,
7. Coal-bed methane production equipment and services,
8. Compressors, turbines, measuring meters, SCADA systems, and pumps for pipelines,
9. Pipeline construction equipment and engineering services,
10. Refinery processing equipment and refinery auxiliary units,
11. Oil and Gas Storage Systems.

Commercial Setting—Kazakhstan

Kazakhstan has the Caspian Sea region's largest recoverable crude oil reserves and accounts for approximately two-thirds of the roughly 1.8 million barrels per day (bpd) currently being produced in the region. The Government of Kazakhstan and foreign investors continue to focus heavily on the hydrocarbons sector, which so far has received approximately 60% of the estimated $58 billion in foreign direct investment in Kazakhstan since 1991, and makes up approximately 53% of its export revenue. Existing oil extraction sites offshore in the North Caspian, combined with onshore fields currently under development, mark Kazakhstan as a potentially major near-term oil exporter. Already its oil production has reached 1.4 million bpd, with daily output expected to total 2.6 million bpd by 2015. As a result, foreign investors are increasing their focus in its energy infrastructure, including oil transportation routes such as the Baku-Tbilisi-Ceyhan pipeline.

Oil industry sources estimate that Kazakhstan could eventually attract up

to $140 billion of foreign investment in its oil infrastructure. Industry experts and the U.S. Commercial Service in Almaty estimate that the current market for oil and gas field equipment and services will grow to $7.5 billion in 2010, and will continue growing at 15–20% annually over the next three years. Kazakhstan as yet has no experience in offshore production and operations. This experience gap offers many opportunities for U.S. service companies in rig work, support infrastructure, and environmentally sensitive technologies. The Caspian Basin's oil-bearing formations are generally quite deep (15,000 feet), under considerable pressure, and often contain a high degree of sulfur and other contaminants, making special drilling and processing equipment necessary. Additionally, U.S. oil and gas field equipment suppliers have the potential for solid growth over the next decade as new fields are brought on-stream and secondary recovery methods are introduced to existing deposits.

Kazakhstan's oil and gas market provides excellent opportunities for U.S. companies within the following product areas:

1. Oil and Gas Well Development;
2. Field Operation;
3. Offshore Oil and Gas Exploration/Exploitation Equipment;
4. Gathering, Treatment, Transportation and Storage of Oil, Petrochemical Products and Natural Gas;
5. Pumps, Fittings and Valves;
6. Gas Detection and Monitoring Systems;
7. Oil and Gas Field Chemicals;
8. Pipeline Construction Equipment; and
9. Pipeline Corrosion Controls.

Mission Goals

The trade mission will assist representatives of American companies responsible for business activity in Eurasia with their efforts to identify profitable opportunities and new markets for their respective U.S. companies and to increase their export potential. The summary of results expected from the mission includes finding potential partners, agents and distributors, joint venture partners, and provide market knowledge for future expansion.

Mission Scenario

In Kazakhstan, mission members will be presented with a briefing by the U.S. Embassy's Commercial Officer, the Commercial Specialist for the oil and gas sector and other key government and corporate officials. Participants will also take part in business matchmaking appointments with Kazakhstani private sector companies. In addition, they will meet with invited representatives from major oil consortia including Tengizchevroil (TCO), North Caspian Operations Company (NCOC), Karachaganak Petroleum Operating (KPO), KazMunayGas (KMG), and others during which they will learn how to get pre-qualified with these operators. The venue will be Almaty, Kazakhstan—the country's business capital.

In Turkey, mission members will also be presented with a briefing by the U.S. Embassy's Commercial Officer, the Commercial Specialist for the oil and gas sector and other key government and corporate officials. Participants will take part in business matchmaking appointments with Turkish private sector companies, which would be potential candidates for agent/representative or distributor. Depending on the availability, potential buyers may also be scheduled for meetings. The venue will be Ankara, the capital of Turkey where the public sector is headquartered and Istanbul where headquarters of most of the private sector is located.

U.S. participants will be counseled before and after the mission by the domestic mission coordinator. Participation in the mission will include the following:

- Pre-travel webinars on subjects ranging from industry briefings to business practices in Turkey and Kazakhstan.
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Istanbul and Ankara, Turkey;
- Transportation to and from all airports and all mission-organized meetings;
- Meetings with key government decision makers and private sector firms;
- Participation in networking receptions in Turkey and Kazakhstan; and
- Meetings with CS Turkey's and CS Kazakhstan's energy oil and gas specialists in Istanbul and Ankara, Turkey and Almaty, Kazakhstan.

Mission Timetable

Mission participants will arrive in Almaty, Kazakhstan on Sunday, June 19, 2011 and the mission program will take place from June 20–24, 2011. Departure to the United States or other onward destinations will be on Sunday, June 25, 2011.

Sunday, June 19, 2011—Almaty, Kazakhstan	• Arrival in Almaty, Kazakhstan.
Day 1: Monday, June 20, 2011—Almaty, Kazakhstan	• Agenda Review and Market briefings by U.S. Embassy officials. • Matchmaking Meetings. • Networking Reception.
Day 2: Tuesday, June 21, 2011—Almaty, Kazakhstan	• Meetings with TCO, KPO, NCOC, KMG, and others. • Further Meetings. • Departure to Turkey.
Day 3: Wednesday, June 22, 2011—Ankara, Turkey	• Embassy Briefing. • Industry Briefing. • Evening Networking Reception at Ambassador's Residence.
Day 4: Thursday, June 23, 2011—Ankara, Turkey	• Briefings by Petroleum Affairs General Directorate and/or Turkish Petroleum (TPAO) and/or PETFORM. • 1–1 matchmaking meetings. • Afternoon/Evening Departure to Istanbul.
Day 5: Friday, June 24, 2011—Istanbul, Turkey	• One-on-one matchmaking meetings with potential agents, distributors or partners. • Evening reception hosted by Consul General.
Day 6: Saturday, June 25, 2011—Istanbul, Turkey	• Departure from Istanbul.

Participation Requirements

All parties interested in participating in the Commercial Service Eurasian Oil and Gas Suppliers Trade Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and

best satisfy the selection criteria as outlined below. A minimum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Turkey and Kazakhstan as well as U.S. companies seeking to enter these markets for the first time may apply.

Expenses:

After a company has been selected to participate on the mission, a participation fee to the U.S. Department of Commerce is required. The participation fee for one representative is $3,160 for a small or medium-sized enterprise (SME) [1] and $4,585 for large firms. The fee for each additional firm representative (SME or large) is $450.

Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of Embassy rates for hotel rooms.

Conditions for Participation:

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation:

Selection will be based on the following criteria:

• Suitability of the company's products or services to the Eurasian Region oil and gas equipment and services market

• Applicant's potential for business in Turkey and Kazakhstan, including likelihood of exports resulting from the mission

• Consistency of the applicant's goals and objectives with the stated scope of the mission

Diversity of company size, type, location, demographics and traditional under representation in business, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, publication in domestic trade publications and association newsletters, direct outreach to internal clients and distribution lists, posting in the **Federal Register**, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than April 15, 2011. The U.S. Department of Commerce will review all applications immediately after the deadline. Applications received after this date will be considered only if space and scheduling constraints permit. We will inform applicants of selection decisions as soon as possible after the deadline.

Contact Information

U.S. Commercial Service Domestic Contact

Brendan Kelly, Tel: 713–209–3113, E-mail: *brendan.kelly@trade.gov.* Lisa Huot, Tel: 202–482–1841, E-mail: *lisa.huot@trade.gov.*

U.S. Commercial Service Almaty, Kazakhstan

Jennifer Kane, Senior Commercial Officer or Azhar Kadrzhanova, Commercial Specialist, U.S. Consulate General—Almaty, 41 Kazybek bi Street, Almaty 050010, Kazakhstan, Tel.: +7 (727) 250–7612, Fax: +7 (727) 250–0777, E-mail: *Jennifer.Kane@trade.gov* and *Azhar.Kadrzhanova@trade.gov.*

U.S. Commercial Service Ankara, Turkey

Michael Lally, Senior Commercial Officer or Serdar Cetinkaya, Senior Commercial Specialist, U.S. Embassy—Ankara, Tel: +90 (312) 457–7203, Fax: +90 (312) 457–7302, E-mail: *Michael.Lally@trade.gov* and *Serdar.Cetinkaya@trade.gov.*

U.S. Commercial Service Istanbul, Turkey

Gregory Taevs, Principal Commercial Officer, Tel: +90 (212) 335 9302, Fax: +90 (212) 335 9103, E-mail: *Gregory.Taevs@trade.gov.*

Frank Spector,

Global Trade Promotion Programs, U.S. & Foreign Commercial Services.

[FR Doc. 2010–33248 Filed 1–4–11; 8:45 am]

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[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations. *See http://www.sba.gov/contractingopportunities/owners/basics/whatismallbusiness/index.html.* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. *See http://www.export.gov/newsletter/march2008/initiatives.html.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 101129594–0594–02]

Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: This notice provides for changes to existing provisions of the National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) published October 21, 1997 (62 FR 54604).

SUMMARY: This notice announces changes to existing provisions of the National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS), primarily to expedite hiring and align APMS Direct-Hire procedures with the Office of Personnel Management (OPM) Direct-Hire Authority (5 CFR part 337 and 69 FR 114). NIST will pilot direct-hire authority under 5 CFR part 337, subpart B, for a period of one year from the issuance date of this notice, for all positions within NIST in the Scientific and Engineering (ZP) career path at the Pay Band III and above, for Nuclear Reactor Operator positions in the Scientific and Engineering Technician (ZT) career path at Pay Band III and above, and for all occupations for which there is a special rate under the General Schedule pay system.

DATES: This notice is effective on January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Essex Brown at the National Institute of Standards and Technology, (301) 975–3801; or Pamela Boyland at the U.S. Department of Commerce, (202) 482–1068.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Public Law 99–574, the NIST Authorization Act for 1987, the Office of Personnel Management (OPM) approved a demonstration project plan, "Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology (NIST)," and published the plan in the **Federal Register** on October 2, 1987 (52 FR 37082). The project plan has been modified twice to clarify certain NIST authorities (54 FR 21331 of May 17, 1989, and 55 FR 39220 of September 25, 1990). The project plan and subsequent amendments were consolidated in the final APMS plan, which became permanent on October 21, 1997, (62 FR 54604). NIST published an amendment on May 6, 2005 (70 FR 23996), which became permanent on June 6, 2005.

The plan provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. This notice formally modifies the APMS plan to align Direct-Hire procedures with OPM's Direct-Hire Authority on a pilot basis. During this pilot period, NIST will be gathering data on the impact of direct-hire authority on veterans preference eligibles as well as information supporting whether or not there is a severe shortage of candidates for the positions covered under the direct-hire authority. Veterans preference is the preferential treatment given to qualified veterans of the United States armed forces under Federal law.

Dated: December 28, 2010.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

Table of Contents

I. Executive Summary
II. Basis for APMS Plan Modification
III. Changes to the APMS Plan

I. Executive Summary

The National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) is designed to (1) Improve hiring and allow NIST to compete more effectively for high-quality researchers through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through installation of a simpler and more flexible classification system based on pay banding through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

Since implementing the APMS, according to findings in the Office of Personnel Management's "Summative Evaluation Report National Institute of Standards and Technology Demonstration Project: 1988–1995," NIST accomplished the following: NIST is more competitive for talent; NIST retained more top performers than a comparison group; and NIST managers reported significantly more authority to make decisions concerning employee pay. This modification builds on this success by piloting direct-hire authority under 5 CFR part 337, subpart B, for a period of one-year.

This amendment modifies the October 21, 1997 **Federal Register** notice. Specifically, it enables NIST to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A for a period of one-year. During the one-year pilot period, NIST will gather data on the impact of direct-hire authority on preference eligibles as well as information supporting whether or not there is a severe shortage of candidates for the positions covered under the direct-hire authority.

NIST will continually monitor the effectiveness of this amendment.

II. Basis for APMS Plan Modification

Section 3304 (c) of title 5, United States Code, provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need.

In 1987 with the approval of the NIST APMS (52 FR 37082), and in 1997 when the APMS plan was modified (62 FR 54604), OPM concurred that all occupations in the ZP career path at the band III and above constitute a shortage category; Nuclear Reactor Operator positions in the ZT Career Path at the Pay Band III and above constitute a shortage category; and all occupations for which there is a special rate under the General Schedule pay system constitute a shortage category.

OPM's Direct-Hire Authority enables agencies to hire, after public notice is given, any qualified application without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A.

NIST APMS allows the NIST Director to modify procedures if no new waiver from law or regulation is added. Given this modification is in accordance with existing law and regulation, the NIST Director is authorized to make the changes described in this notice. The modification to our final **Federal Register** Notice, dated October 21, 1997, with respect to our Staffing authorities is provided below.

III. Changes in the APMS Plan

The APMS at the NIST, published in the Federal Register October 21, 1997 (62 FR 54604) is amended as follows:

1. The subsection titled: "Direct Examination and Hiring" is deleted.

2. The subsection titled "Direct Hire: Critical Shortage Highly Qualified Candidates" is deleted.

3. The information under the subsection titled: "NIST Applicant Supply File" is replaced with: NIST advertises the availability of job opportunities in Direct-Hire occupations by posting on the OPM USAJOBS Web site. NIST would follow internal Direct Hire procedures for accepting applications.

4. The subsection titled: "Referral Procedures for Direct Examination and Hiring and Agency Based Staffing Authorities" is deleted.

5. A new subsection titled: "Referral Procedures for Direct-Hire" is added and the information under this subsection is as follows: After public notice is given, a qualified candidate may be referred without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A.

6. The subsection titled: "Direct Referral" is deleted.

7. The subsection titled: "Rating and Ranking" is deleted.

[FR Doc. 2010–33307 Filed 1–4–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 2011 Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Conference on Weights and Measures (NCWM) 2011 Interim Meeting will be held January 23 to 26, 2011. Publication of this notice on the NCWM's behalf is undertaken as a public service. The meetings are open to the public but a paid registration is required. Please see registration information in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The meeting will be held on January 23 to 26, 2011.

ADDRESSES: The meeting will be held at the Fairmont Dallas, 1717 North Akard Street, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–5507 or by e-mail at *Carol.Hockert@nist.gov.*

SUPPLEMENTARY INFORMATION: The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, Federal agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration and enforcement. NIST participates to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other trade and commerce issues. To register to attend the meeting, please see NCWM Publication 15 "Interim Meeting Agenda" which contains meeting agendas, registration forms and hotel reservation information at *http://www.ncwm.net* or *http://www.nist.gov/owm* on the Internet.

The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption at its 2011 Annual Meeting to be held at the Holiday Inn Downtown at the Park 200 South Pattee Street, Missoula, Montana 59802, on July 17 to 21, 2011. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44)." Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of product sold among businesses.

Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality" and NIST Handbook 133 "Checking the Net Contents of Packaged Goods."

NCWM Specifications and Tolerances Committee

The following item is a proposal to amend NIST Handbook 44:

General Code

The S&T Committee will consider Item 310–3 G–A.6. Nonretroactive Requirements (Remanufactured Equipment). The purpose of this proposal is to clarify the intent of the position issued by the NCWM in 2001 regarding the application of nonretroactive requirements to devices which have been determined to have been "remanufactured." The item under consideration includes a proposed to amend subparagraphs (a) and (b) of NIST Handbook 44's General Code paragraph G–A.6. Nonretroactive Requirements to read as follows: G–A.6. Nonretroactive Requirements.—''Nonretroactive" requirements are enforceable after the effective date for (a) Devices manufactured and remanufactured within a state after the effective date; (b) both new, and used, and remanufactured devices brought into a state after the effective date; and (c) devices used in noncommercial applications which are placed into commercial use after the effective date. Nonretroactive requirements are not enforceable with respect to devices that are in commercial service in the state as of the effective date or to new equipment in the stock of a manufacturer or a dealer in the state as of the effective date. [Nonretroactive requirements are printed (in NIST Handbook 44) in italic type.]

Special Meeting Announcement: A Task Group on Retail Motor Fuel Dispenser (RMFD) Price Posting and Computer Capability will meet from 1:30 to 4 p.m. on January 23, 2011 to develop criteria for possible inclusion in the Liquid Measuring Device Code (LMD) related to price posting and computing capability on RMFDs to reflect current market practices in posting fuel prices.

NCWM Laws and Regulations Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

Method of Sale of Commodities Regulation

Item 232–1. Polyethylene Products, Method of Sale Regulation Section 2.13.4. "Declaration of Weight."—The L&R Committee will consider a proposal to revise the density value used to calculate the net weights on some packages of polyethylene products. The intent of the proposal is to recognize heavier density plastics are being used in the production of some sheeting and bag products. (See also related Item 260–2 under NIST Handbook 133, Chapter 4.7. Polyethylene Sheeting-Test Procedure—Footnote to Step 3 in the complete agenda of the L&R Committee in NCWM Publication 15).

Item 232–2. Proposed Method of Sale Regulation for Packages of Printer Ink and Toner Cartridges—The L&R Committee will consider a proposed method of sale regulation to clarify the labeling requirements for packaged inkjet and toner cartridges to ensure that consumers are informed about the net quantity of contents of these products so value comparisons can be made.

Special Meeting Announcements

The Task Group on Printer Ink and Toner Cartridges will meet on January 23, 2011, from 1:30 to 4 p.m.

The Fuel and Lubricants Subcommittee will meet on January 23, 2011, from 1:30 to 4 p.m. to consider proposals related to requirements of a wide variety of engine fuels.

NIST Handbook 133

Items 260–1 & 260–3. Guidance on Allowing for Moisture Loss and Other Revisions & Moisture Allowance for Pasta Products—The L&R Committee will consider a proposal to clarify the handbook's guidance on making allowances for moisture loss that occurs in some packaged goods. The L&R Committee will also consider a proposal to adopt a specific 3% moisture allowance for macaroni, noodle, and like products (pasta products).

Item 260–4. Seed Count for Agricultural Seeds—The L&R Committee will consider a proposal that the NCWM reconsider a method of sale and test procedures for use with packaged agricultural seed (specifically corn seed, soybean seed, field bean seed, and wheat seed) sold by "count" adopted at the 2010 NCWM Annual Meeting.

Dated: December 29, 2010.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2010–33300 Filed 1–4–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA123

Marine Mammals; File No. 15616

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Craig Matkin, North Gulf Oceanic Society, Homer, AK, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 4, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15616 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to study marine mammals in Alaskan waters, including southeast Alaska, Prince William Sound, the Kenai Peninsula, the Eastern Aleutian Islands, and the Bering Sea. The purpose of the research is to maintain a long-term killer whale (*Orcinus orca*) monitoring program in Alaskan waters that was initiated over 25 years ago. In addition, the permit holder would examine movements of other non-endangered cetacean species along the North Gulf Coast of Alaska in relation to U.S. Navy testing activities. The proposed research activities include photo-identification, passive acoustic recording, biopsy sampling, tagging with barbed darts and suction cups, and collecting samples of marine mammal carcasses from sites of killer whale predation.

The applicant requests to photoidentify and acoustically record (PI), biopsy sample (BS), attach barbed dart satellite tags (DT), and suction cup tags (ST) to the following cetacean species: killer whales (PI 2000, BS 100, DT 75, ST 75), gray whales (*Eschrichtius robustus;* PI 100, BS 8, DT 25), Baird's beaked whales (*Berardius bairdii;* PI 50, BS 8, DT 8), Cuvier's beaked whales (*Ziphius cavirostris;* PI 50, BS 8, DT 8), and Stejneger's beaked whales (*Mesoplodon stejnegeri;* PI 50, BS 8, DT 8). Prey remains would be collected from carcasses of the following species: 15 minke whales (*Balaenoptera acutorostrata*), 25 gray whale, 15 harbor porpoise (*Phocoena phocoena*), 15 Dall's porpoise (*Phocoenoides dalli*), 25 harbor seals (*Phoca vitulina*), 15 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), 25 northern fur seals (*Callorhinus ursinus*), 25 other "unidentified" cetaceans, and 25 other "unidentified" pinnipeds.

An initial determination has been made in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 29, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–33309 Filed 1–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA126

Pacific Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a meeting of the Ecosystem Plan Development Team (EPDT) which is open to the public.

DATES: The EPDT will meet on Wednesday, January 26, 2011, beginning at 1:30 p.m. and on Thursday, January 27th beginning at 8:30 a.m. Both meeting sessions will conclude at 5 p.m., or when business for each day is completed.

ADDRESSES: The EPDT meeting will be held at the NMFS, Southwest Fisheries Science Center, Conference Room, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

FOR FURTHER INFORMATION CONTACT: Mike Burner, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: Please note, this is not a public hearing; it is a work session for the primary purpose of drafting a report and recommendations to the Council on the development of an Ecosystem Fishery Management Plan (EFMP). At the September 2010 Council meeting, the EPDT and the Ecosystem Advisory Subpanel provided an initial report on EFMP development that included a draft statement of purpose and need, a list of initial goals and objectives, and options for the EFMP's geographic range, managed species, and regulatory scope. In response, the Council tasked the EPDT with a review of the Council's four fishery management plans (FMPs) to identify existing ecosystem-based principles as well as common management needs that may benefit from a coordinated overarching EFMP framework. A draft version of an EPDT report responding to the Council's direction will be reviewed at this meeting and is ultimately scheduled to be presented to the Council and its Advisory Bodies at the March 2011 Council meeting in Vancouver, WA.

Although non-emergency issues not contained in the meeting agenda may come before the EPDT for discussion, those issues may not be the subject of

formal EPDT action during this meeting. EPDT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 30, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–33277 Filed 1–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA127

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting on Tuesday–Thursday, January 25–27, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will begin at 9 a.m. on Tuesday, January 25 and at 8:30 a.m. on each of the following two meeting days.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300 and fax: (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 25, 2011

Following introductions and any announcements, the Council will begin its meeting with a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, as well as NOAA Enforcement. These reports will be followed by a review of any experimental fishery permit applications that have been received since the last Council meeting in November 2010. The Chairman of the Habitat Committee will then provide a brief update on activities to date to complete Habitat Omnibus 2, an action that will amend all of the Council's Fishery Management Plans (FMPs) with respect to Essential Fish Habitat and minimizing the habitat impacts of fishing activities. Members of the Council's Scientific and Statistical Committee (SSC) will report on their white paper and further outline approaches to undertaking ecosystem-based fisheries management. Prior to a lunch break, an Ocean Observatories Initiative representative will present an outline of their project—a networked sensor system array proposed for offshore Southern New England to measure the physical, chemical, geological and biological variables in the ocean and its seafloor. During the afternoon session, the Council will accept public comments on issues related to fisheries management, but not listed on the meeting agenda. Later, the Skate Committee will discuss and the Council will consider approval of an action to lower the skate wing possession limit for the 2011 fishing year. A Northeast Fisheries Science Center representative will report on the November 2010 Stock Assessment Workshop/Stock Assessment Review Committee meeting that determined the status of Loligo, and five species of hake. The day will conclude with a report on the recent International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting. The focus will be on bluefin tuna and northern swordfish.

Wednesday, January 26, 2011

During the morning session, the Council may initiate a framework adjustment to the Northeast Multispecies FMP that could include a catch cap for haddock taken in the herring midwater trawl fishery. Following this discussion, the Herring Committee will ask the Council to approve management alternatives for inclusion in a Draft Environmental Impact Statement that will accompany Amendment 5 to the Atlantic Herring FMP. The action may address the following: catch monitoring alternatives; river herring bycatch; midwater trawl access to the groundfish closed areas; interactions with the Atlantic mackerel fishery; and protection for spawning herring. This agenda item will be discussed until the meeting adjourns at the end of the business day.

Thursday, November 19, 2009

The last day of the Council meeting will begin with a discussion of an amendment to the Northeast Multispecies FMP that could authorize state-operated permit banks as well as groundfish fleet diversity and accumulation limits. The Council also may discuss recent legislation that will affect the U.S./Canada Resource Sharing Understanding and may comment on the NMFS proposed rule for Framework Adjustment 45 to the Multispecies FMP. NOAA General Counsel in the Northeast Region will provide an update on case developments and/or regulatory issues that have arisen over the last six-to-eight months. Following this review, the Council plans to initiate Framework Adjustment 23 to the Sea Scallop FMP. The action could require scallop dredge vessels to use a turtle excluder device, possibly modify the amount of yellowtail flounder allocated to the scallop fishery and modify the limited access general category program in the Northern Gulf of Maine. The Council also plans to take final action on Framework Adjustment 7 to the Monkfish FMP. Included are measures to revise the biomass reference points, and accordingly, the Annual Catch Target in the monkfish Northern Management Area. Days-at-sea and trip limits for the 2011–13 fishing years also will be modified. Before adjournment, the Council may address any other outstanding business related to this meeting.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 30, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–33282 Filed 1–4–11; 8:45 am]

BILLING CODE 3510–22–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; correction.

SUMMARY: On Tuesday, December 28, 2010 (75 FR 81242), the Department of Defense published a notice seeking comment on a new proposed public information collection: 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. The notice contained an incomplete phone number in the **FOR FURTHER INFORMATION CONTACT** section. The correct information follows.

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) 553–8411. (this is not a toll-free number).*

Dated: December 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–33263 Filed 1–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 4, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 29, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

OMB Control Number: 1820–0660.

Agency Form Number(s): N/A.

Frequency of Responses: Every three years.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 56.

Total Estimated Annual Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB program is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment difficult to attain, but for whom independent living goals are feasible.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4444. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–33311 Filed 1–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–50–000]

PetroLogistics Natural Gas Storage, LLC; Notice of Application

December 28, 2010.

Take notice that on December 14, 2010, PetroLogistics Natural Gas Storage, LLC (PetroLogistics), 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, filed in Docket No.

CP11–50–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity to construct the Choctaw Hub Expansion Project in Iberville Parish, Louisiana. Specifically, the project consists of (1) placing into Commission-jurisdictional service two existing salt storage caverns; (2) constructing 13 miles of 30-inch pipeline that will parallel PetroLogistics' existing header; (3) constructing two new compressor units, totaling 27,000 horsepower, at its existing compressor station; (4) constructing associated piping, measuring, and appurtenant facilities in order to integrate the proposed project into PetroLogistics' existing storage facility; and (5) increasing the maximum daily deliverability and withdrawal capacity of the storage facility, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Allen Kirkley, PetroLogistics Natural Gas Storage, LLC, 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, or by calling (225) 706–2253 (telephone) or (225) 706–7050 (fax).

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–33251 Filed 1–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 28, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2494–016; ER10–256–003; ER09–1297–004; ER09–832–011; ER07–1157–008; ER07–875–007; ER03–1025–008; ER03–179–012; ER01–838–012.

Applicants: ESI Vansycle Partners, L.P.; FPL Energy Stateline II, Inc.; Northern Colorado Wind Energy, LLC; NextEra Energy Power Marketing, LLC; Logan Wind Energy LLC; Peetz Table Wind Energy, LLC; FPL Energy Wyoming, LLC; FPL Energy New Mexico Wind, LLC; FPL Energy Vansycle LLC

Description: NextEra Companies Northwest Triennial Market Power Update.

Filed Date: 12/27/2010.

Accession Number: 20101227–5088.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER98–3096–020; ER98–4138–014; ER99–2781–016; ER07–903–007; ER00–1770–025; ER05–1054–008; ER01–202–013; ER04–472–014; ER96–1361–018.

Applicants: Delmarva Power & Light Company, Potomac Electric Power Company, Atlantic City Electric Company, Pepco Energy Services, Inc, Potomac Power Resources, LLC, Fauquier Landfill Gas, LLC, Eastern Landfill Gas, LLC, Connectiv Energy Supply, Inc., Bethlehem Renewable Energy LLC

Description: Triennial Market-Based Rate Update Filing for Atlantic City Elec. Co; Delmarva Power-Light; Potomac Elec. Pwr Co.; Connectiv Energy Supp.; Pepco Energy Svcs.; Bethlehem Renewable Energy; Eastern

Landfill Gas; Potomac Power Res.; Fauquier Landfill Gas.

Filed Date: 12/27/2010.

Accession Number: 20101227–5089.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–2477–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc. Compliance Filing.

Filed Date: 12/22/2010.

Accession Number: 20101222–5305.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 12, 2011.

Docket Numbers: ER10–2680–002.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35: OATT Section 4.2 and Attachment C 12/28/2010 to be effective 4/1/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5090.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–128–001.

Applicants: Grand Ridge Energy IV LLC.

Description: Grand Ridge Energy IV LLC submits tariff filing per 35: Compliance Filing of Facility Connection Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–129–001.

Applicants: Grand Ridge Energy IV LLC.

Description: Grand Ridge Energy IV LLC submits tariff filing per 35: Compliance Filing of Amended Shared Facilities Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–130–001.

Applicants: Grand Ridge Energy LLC.

Description: Grand Ridge Energy LLC submits tariff filing per 35: Compliance Filing of Amended Shared Facilities Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5030.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–131–001.

Applicants: Grand Ridge Energy II LLC.

Description: Grand Ridge Energy II LLC submits tariff filing per 35: Compliance Filing of Amended Shared Facilities Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5031.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–132–001.

Applicants: Grand Ridge Energy III LLC.

Description: Grand Ridge Energy III LLC submits tariff filing per 35: Compliance Filing of Amended Shared Facilities Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5032.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–133–001.

Applicants: Grand Ridge Energy V LLC.

Description: Grand Ridge Energy V LLC submits tariff filing per 35: Compliance Filing of Amended Shared Facilities Agreement to be effective 12/22/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5033.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2171–001.

Applicants: HOP Energy, LLC.

Description: HOP Energy, LLC submits tariff filing per 35: Compliance Filing to be effective 11/23/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5035.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2428–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Revisions to Clarify Losses Calculation Amendment to be effective 3/1/2011.

Filed Date: 12/27/2010.

Accession Number: 20101227–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2520–000.

Applicants: Pacific Northwest Generating Cooperative.

Description: Appendix C to the Updated Market Power Analysis of Pacific Northwest Generating Cooperative, Inc.

Filed Date: 12/28/2010.

Accession Number: 20101228–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2527–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Second ministerial filing incorporating language accepted in Docket No ER10–1196 to be effective 1/1/2011.

Filed Date: 12/27/2010.

Accession Number: 20101227–5065.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2528–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: North Buffalo Wind GIA to be effective 12/10/2010.

Filed Date: 12/27/2010.

Accession Number: 20101227–5082.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2529–000.

Applicants: Dynegy Midwest Generation, Inc.

Description: Dynegy Midwest Generation, Inc. submits tariff filing per 35.13(a)(2)(iii: Dynegy Midwest Generation, Inc., Amended and Restated Black Start Agreement to be effective 1/1/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5000.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2530–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: SVP IA Modifications to be effective 2/28/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5001.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2531–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: DEI–Hagerstown SA 2285 WDS to be effective 12/1/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2532–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35: FPL OATT Order 676–E Compliance Filing to Attachment O to be effective 4/1/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5037.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2533–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff

filing per 35.13(a)(2)(iii: Steelwinds II IA Among NYISO, Niagara Mohawk, Niagara Wind Power, and Erie Wind to be effective 11/1/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5061.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2534–000.

Applicants: Morris Cogeneration, LLC.

Description: Morris Cogeneration, LLC submits tariff filing per 35.12: Morris Cogeneration, LLC Application for Market-Based Rate Authority to be effective 1/1/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5067.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2535–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Steelwinds I IA Among Niagara Mohawk, Niagara Wind Power, and Erie Wind to be effective 12/20/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5069.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2536–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits tariff filing per 35.37: CMP MBR Tariff Revisions Dec. 2010 to be effective 12/27/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5072.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2537–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35: Rate Schedule No. 217 Compliance Filing to be effective 10/6/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5078.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2538–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35: Rate Schedule No. 217 Compliance Filing to be effective 11/12/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5079.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2539–000.

Applicants: Plains End, LLC.

Description: Plains End, LLC submits tariff filing per 35.13(a)(2)(iii): Revised MBR Tariff to be effective 2/26/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5091.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2540–000.

Applicants: Plains End II, LLC.

Description: Plains End II, LLC submits tariff filing per 35.13(a)(2)(iii): Revised MBR Tariff to be effective 2/26/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5099.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2541–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35: 12_28_10 Order 676E and 729B_Changes to Attch C to be effective 4/1/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5101.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2542–000.

Applicants: Rathdrum Power, LLC.

Description: Rathdrum Power, LLC submits tariff filing per 35.13(a)(2)(iii): Revised MBR Tariff to be effective 2/26/2011.

Filed Date: 12/28/2010.

Accession Number: 20101228–5105.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Docket Numbers: ER11–2543–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 188 of Carolina Power and Light Company to be effective 10/29/2010.

Filed Date: 12/28/2010.

Accession Number: 20101228–5114.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–13–000.

Applicants: AEP Texas Central Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Texas Central Company.

Filed Date: 12/28/2010.

Accession Number: 20101228–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that

enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–33250 Filed 1–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Central Arizona Project-Rate Order No. WAPA–153

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Temporarily Extending Transmission Formula Rates.

SUMMARY: This action is to extend the existing Central Arizona Project (CAP) formula rates through December 31, 2012. The existing Transmission Service Formula Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 expire on December 31, 2010. These Transmission Service Rate Schedules contain formula rates that are recalculated from annual updated financial and load data.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing rates, contained in Rate Order No. WAPA–124 [1] were approved for 5 years through December 31, 2010. Western is proposing to temporarily extend the existing CAP transmission service formula rates pursuant to 10 CFR 903.23 (b).

Western is engaged in ongoing discussions with CAP stakeholders and these discussions may ultimately result in Western proposing future changes to the formula rates. Therefore, Western believes it is premature to proceed with a formal rate adjustment process at this time. Extending the existing Transmission Service Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 through December 31, 2012, will provide adequate time for Western to finalize these discussions.

The existing CAP formula rates collect sufficient revenue to meet all annual costs, including interest expense, and repayment of required investment, thus ensuring repayment of the project within the cost recovery criteria set forth in DOE order RA 6120.2.

Western did not have a consultation and comment period and did not hold public information and comment forums, in accordance with 10 CFR 903.23 (b).

Following review of Western's proposal within the Department of Energy, I hereby approve Rate Order No. WAPA–153, extending the existing Transmission Service Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 through December 31, 2012. Rate Order No. WAPA–153 will be submitted to FERC for informational purposes only.

Dated: December 29, 2010.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy

Deputy Secretary

In the Matter of:

Western Area Power Administration, Rate Extension for Central Arizona Project, Transmission Service Rate Schedules.

Rate Order No. WAPA–153.

Order Confirming and Approving an Extension of the Central Arizona Project Transmission Service Rate Schedules

Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152) transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This temporary extension is issued pursuant to the Delegation Order and DOE rate extension procedures at 10 CFR 903.23(b).

Background

On June 29, 2006, in Docket No. EF06–5111–000 at 115 FERC ¶ 62,326 FERC issued an order confirming, approving, and placing into effect on a final basis the Transmission Service Rate Schedules CAP–FT2, CAP–NFT2 and CAP–NITS2 for the CAP. The Transmission Service Rates, Rate Order No. WAPA–124, were approved for 5 years beginning January 1, 2006 through December 31, 2010.

Discussion

Western is proposing to extend the existing transmission rate schedules pursuant to

10 CFR 903.23(b). Western's existing Transmission Service Formula Rates, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through December 31, 2012. Western did not have a consultation and comment period and did not hold public information and comment forums, in accordance with

10 CFR 903.23(b).

Order

In view of the above and under the authority delegated to me, I hereby extend from January 1, 2011 through December 31, 2012, the existing Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 for transmission service for the Central Arizona Project of the Western Area Power Administration.

Dated: December 29, 2010.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. 2010–33278 Filed 1–4–11; 8:45 am]

BILLING CODE 6450–01–P

[1] FERC confirmed and approved Rate Order No. WAPA–124 on June 29, 2006 in Docket No. EF06–5111–000. See *United States Department of Energy, Western Area Power Administration, Central Arizona Project,* 115 FERC ¶ 62,326.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9248–3]

Clean Water Act Section 303(d): Notice for the Establishment of the Total Maximum Daily Load (TMDL) for the Chesapeake Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of the Chesapeake Bay TMDL.

SUMMARY: This notice announces EPA's establishment of the Chesapeake Bay (Bay) TMDL on December 29, 2010 for nitrogen, phosphorus and sediment for the Chesapeake Bay and its tidal tributaries. EPA provided a 45-day public review of the Draft Bay TMDL which was held from September 24 through November 8 of 2010. Based on comments and information EPA received from the public and affected jurisdictions during the public review period, EPA has revised the draft TMDL as appropriate and established the Bay TMDL for nitrogen, phosphorus and sediment for each of the 92 segments in the tidal portion of the Chesapeake Bay watershed pursuant to Sections 117(g) and 303(d) of the Clean Water Act (CWA). The TMDL provides pollutant loads for nitrogen, phosphorus and sediment which can enter a waterbody without causing a violation in the water quality standards. The TMDL allocates that pollutant load between point and nonpoint sources. The Bay TMDL contains segment specific point (wasteload) and non-point (load) allocations for nitrogen, phosphorus and sediment that when met will assure the attainment and maintenance of all applicable water quality standards for each of the 92 segments. The Bay TMDL is a key part of the clean water commitment in the Federal Strategy developed as part of Executive Order 13508 on Chesapeake Bay Protection and Restoration. EPA has worked closely with its federal partners, the six watershed states, the District of Columbia, local governments and other parties to put in place a comprehensive, transparent and accountable set of commitments and actions that together ensure that pollution controls needed to restore Bay water quality are implemented by no later than 2025 (Executive Order, 13508).

Additional information on the Bay TMDL can be found at: *http://www.epa.gov/chesapeakebaytmdl.*

Viewing: The TMDL can be viewed at *http://www.epa.gov/chesapeakebaytmdl,* in person at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103 with proper arrangements made in advance with the Region 3 library (215–814–5254 or *library-reg3@epa.gov*) or at the EPA Chesapeake Bay Program Office at 410 Severn Avenue, Suite 112, Annapolis, MD 21403 (Contact Debbie Embleton 410–267–9856 or *Embleton.debbie@epa.gov*).

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each state identify those waters within its boundaries for which existing technology-based and other pollution controls required by the CWA are not stringent enough to attain or maintain state water quality standards. A TMDL must be established for each of those "impaired" waters. TMDLs are pollution budgets designed to identify necessary reductions of pollutant loads to the impaired waters so that the appropriate water quality standards are met, including designated uses like fishing or swimming and water quality criteria for parameters such as dissolved oxygen and water clarity.

Background: EPA solicited comments on the Draft Bay TMDL during a 45-day public review of the TMDL which was held from September 24 through November 8 of 2010. During the review period EPA held 18 public meetings and webinars throughout the watershed to assist the public in their understanding of the draft TMDL. Based on comments EPA received from the public and affected jurisdictions during the public review period, as well as watershed implementation plans submitted by the jurisdictions, EPA has revised the draft TMDL as appropriate and is establishing the Bay TMDL for nitrogen, phosphorus and sediment for each of the 92 segments in the tidal portion of the Chesapeake Bay watershed pursuant to Sections 117 (g) and 303(d) of the Clean Water Act (CWA).

Why was a TMDL developed for the Chesapeake Bay? The Chesapeake Bay is a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. Despite significant efforts by federal, state, and local governments and other interested parties, water pollution in the Chesapeake Bay prevents the attainment of existing state water quality standards. The pollutants that are largely responsible for impairment of the Chesapeake Bay are nitrogen, phosphorus, and sediment. EPA, in coordination with the Bay watershed jurisdictions of Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, established nitrogen, phosphorus and sediment pollution budget for the Bay consistent with CWA requirements to guide and assist Chesapeake Bay restoration efforts.

Who developed the Bay TMDL? EPA Region III Water Protection Division was primarily responsible for the establishment of the Bay TMDL, at the request of the Bay jurisdictions. The Chesapeake Bay Program Office in EPA Region III had the modeling and water quality expertise needed to develop a TMDL. EPA Region II provided guidance and technical support to Region III and cosigned the final TMDL as New York State is included in the Chesapeake Bay watershed, and sources in New York State (like the other jurisdictions) contribute nitrogen, phosphorus and sediment to the Bay. EPA used the Chesapeake Bay Program committee structure to engage the watershed jurisdictions in the development of the TMDL, including the Chesapeake Bay Water Quality Goal Implementation Team (formerly the Water Quality Steering Committee and Nutrient Subcommittee), which is composed of the seven Bay watershed jurisdictions, the Chesapeake Bay Commission, the Susquehanna River Basin Commission, the Interstate Commission on the Potomac River Basin, and EPA Regions II and III. Major policy input was provided by the Chesapeake Bay Program Principals' Staff Committee (Secretaries from each Bay jurisdiction, the Chesapeake Bay Commission Executive Director, and the EPA Region III Regional Administrator) and Executive Council (Bay watershed State Governors, Mayor of District of Columbia, the Chesapeake Bay Commission Chair, and the EPA Administrator).

What is the scope of the Bay TMDL? The Bay TMDL addresses all segments of the Chesapeake Bay and its tidal tributaries. The Bay TMDL consists of pollutant allocations, addressing nitrogen, phosphorus and sediment, for each of the 92 segments in the Bay and tidal tributaries. EPA intends that the Bay TMDL will be established at a level necessary to ensure attainment of water quality standards in each of these segments. In addition, the Bay TMDL assigns individual and (as appropriate) aggregate maximum daily and annual allowable point source and nonpoint source loadings, called wasteload allocations (WLAs) and load allocations (LAs), respectively, across all jurisdictions within the Bay watershed.

How will the TMDL promote nitrogen, phosphorus and sediment reductions? Under CWA, the Bay TMDL established a watershed pollution budget for nitrogen, phosphorus and sediment

necessary to meet water quality standards in the Bay. Other provisions of the CWA, as well as the jurisdictions' Watershed Implementation Plans (WIPs), were developed to implement the Bay TMDL. EPA worked with its partners, the Bay jurisdictions, to assist in their development of individual jurisdiction-specific WIPs, which collectively serve as part of the overall TMDL implementation framework. Those WIPs are not part of the Bay TMDL itself but are part of the TMDL record and help provide reasonable assurance that the necessary nitrogen, phosphorus and sediment reductions identified in the TMDL will be achieved. The WIPs identify specific nitrogen, phosphorus and sediment reduction targets by geographic location and sector to achieve allowable loadings, as well as a description and schedule of actions that the jurisdictions will take to achieve these reductions.

In accordance with Executive Order 13508, EPA and the jurisdictions also will provide the next set of two-year milestone commitments specifying what source controls will be taken to reduce nitrogen, phosphorus and sediment during that period. Any questions or comments regarding the substance of the individual WIPs, or the WIPs themselves should be addressed to the individual jurisdiction. Links to the WIPs are available at *http://www.epa.gov/chesapeakebaytmdl.*

Dated: December 29, 2010.

Jon M. Capacasa,

Water Protection Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2010–33280 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0190; FRL–8858–4]

Second National Bed Bug Summit; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is planning the second National Bed Bug Summit to be held February 1 and 2, 2011, on the topic of the bed bug resurgence in the United States. The goal of this meeting is to review the current bed bug problem and identify and prioritize further actions to address the problem. The objectives of the summit are to identify knowledge gaps and barriers to effective community-wide bed bug control; propose the next steps in addressing knowledge gaps and eliminating barriers; and develop a framework for addressing the highest priority needs. The agenda for this meeting is under development and will be posted on our Web site and placed in the docket in advance of the meeting.

DATES: The meeting will be held on February 1 and 2, 2011, from 8:30 a.m. to 6 p.m. Requests to participate in the meeting must be received on or before January 24, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Georgetown University Hotel and Conference Center at 3800 Reservoir Road, NW., Washington, DC 20057. For additional information on the location, please see the following Web page: *http://www.acc-guhotelandconferencecenter.com/.*

FOR FURTHER INFORMATION CONTACT: Angela Hollis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0216; fax number: (703) 308–0029; e-mail address: *hollis.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about bed bugs, persons who work in residential settings, housing owners and managers, pest management professionals, pesticide industry and trade associations, public health organizations, environmental and consumer groups, academia, State, local and Tribal governments, persons who are interested in implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA), and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0190. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

The resurgence of the common bed bug continues to be affecting many areas of the country. As this resilient pest has become a nationwide problem affecting hotels, universities, and homes in the general population, it is important that the federal government assist in exploring means of effectively identifying challenges and ways to remedy this pest concern. EPA began discussions to share information on the topic of bed bugs at the first National Bed Bug Summit in April 2009. The first summit provided a venue to identify ideas and opinions on bed bug control and to develop recommendations. This second Bed Bug Summit will further these discussions by identifying knowledge gaps and barriers to effective community-wide bed bug control; proposing the next steps in addressing knowledge gaps and eliminating barriers; and developing a framework for addressing the highest priority needs. Potential participants for this forum include Federal, State, and local government agencies responsible for public health and public housing, researchers and academicians; health, housing and environmental advocacy organizations; the pest management industry; pesticide manufacturers; and other interested parties. All interested parties are encouraged to participate.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to *BedBugSummit2Registration@epa.gov.* Requests to participate in the meeting should include name, affiliation, address, telephone number, and e-mail address. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting must be received on or before January 24, 2011.

List of Subjects

Environmental protection.

Dated: December 23, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–33200 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0130; FRL–8855–2]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide products Spirotetramat Technical, Movento, BYI 8330 150 OD Insecticide, Ultor, and Spirotetramat 240 SC Greenhouse & Nursery Insecticide/Miticide containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Spirotetramat is a tetramic acid derivative (ketoenole), and is active against sucking insects in vegetables, citrus, pome fruit, stone fruit, grapes, cotton and other plants. It is systemic (xylem and phloem mobile) and can control hidden pests and protect new shoots.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0130. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved labels, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

II. Did EPA conditionally approve the application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of spirotetramat, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of spirotetramat during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Approved Applications

EPA issued a notice, published in the **Federal Register** of February 26, 2010 (75 FR 8939) (FRL–8812–8), which announced that Bayer CropScience and Bayer Environmental Science had submitted applications to register the pesticide products, Spirotetramat Technical, Movento, BYI 8330 150 OD Insecticide, Ultor, and Spirotetramat 240 SC Greenhouse & Nursery Insecticide/Miticide, for control of insect pests, (EPA File Symbols 264–RNUO, 264–RNLN, 264–RNLR, 264–RNAL, and 432–RUTR), containing 97.37%, 22.4%, 15.3%, 14.5%, and 22.4% active ingredient respectively. These products were previously registered in 2008, but the registrations were vacated by court order on December 23, 2009, due to lack of publication of a notice of receipt of the registration applications in the **Federal Register** under section 3(c)(4) of FIFRA. As a result of the vacatur, EPA treated Bayer's earlier-filed applications for registration as then-pending before the Agency.

The applications were conditionally approved on October 15, 2010, as Spirotetramat Technical, Movento, BYI 8330 150 OD Insecticide, Ultor, and Spirotetramat 240 SC Greenhouse & Nursery Insecticide/Miticide (EPA Registration Numbers 264–1049, 264–1050, 264–1051, 264–1065, and 432–

1471 respectively) for insect control on citrus, grapes, pome fruit, stone fruit, tree nuts, hops, Christmas tree plantations, vegetables except cucurbits, potato, greenhouses, nurseries, and interiorscapes. The registrations for end-use products were limited to 3 years, expiring on October 15, 2013.

IV. Missing Data

1. *Conditional data required for Spirotetramat Technical consists of:*

a. Avian Reproduction Study with the Mallard Duck (*Anas platyrhynchos*) (OPPTS Guideline 850.2300).

b. Immunotoxicity Study (OPPTS Guideline 870.6200).

c. Subchronic Neurotoxicity Study (OPPTS Guideline 870.6200).

d. Full-scale five-batch preliminary analysis of the technical material (OPPTS Guideline 830.1700).

2. *Conditional data required for the end-use products consists of:*

a. Residue Analysis of Nectar and Pollen in Flowering Citrus (OPPTS Guideline: Special Study).

b. Residue Analysis of Nectar and Pollen in Flowering Tree Crops OPPTS Guideline: Special Study).

V. Response to Comments

EPA issued a notice, published in the **Federal Register** of February 26, 2010 (75 FR 8939), which announced that Bayer CropScience and Bayer Environmental Science had submitted applications to register the pesticide products, Spirotetramat Technical, Movento, BYI 8330 150 OD Insecticide, Ultor, and Spirotetramat 240 SC Greenhouse & Nursery Insecticide/ Miticide. During the public comment period of this notice, comments were received from growers, non-governmental organizations, and the applicant. EPA's response to these comments is posted to the docket EPA–HQ–OPP–2010–0130.

List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: December 23, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–33279 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–1070; FRL–8859–8]

Pesticides; Availability of Pesticide Registration Notice Regarding the Residential Exposure Joint Venture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) regarding the data development efforts of the Residential Exposure Joint Venture, L.L.C. This PR Notice (PR Notice 2011–1) issued by the Agency on December 23, 2010. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice provides information concerning the formation of an industry task force for the development of data supporting pesticide registration, in which registrants may wish to participate.

FOR FURTHER INFORMATION CONTACT: Richard P. Dumas, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; fax number: (703) 308–8005; e-mail address: *dumasp.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this notice if you register pesticide products intended for residential uses under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–1070. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What action is the agency taking?

The Agency is announcing the issuance of a Pesticide Registration Notice (PR–2011–1) that addresses the data development efforts of the Residential Exposure Joint Venture (REJV). When registering or periodically reviewing an existing registration, the Agency evaluates the potential risks to people from exposure to the pesticide in and around the home. The REJV was formed to develop information on the actual use patterns of residential pesticides that can be used by EPA, and other regulatory agencies responsible for assuring the safety of pesticides. The purpose of the PR Notice is to describe what data the REJV plans to generate, to describe how EPA expects to use the data, and to inform registrants of the opportunity to join REJV.

B. What is the agency'sauthority for taking this action?

The PR Notice discussed in this notice is intended to provide information to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

List of Subjects

Environmental protection, Administrative practice and procedure, Residential pesticide use, Pesticides and pests.

Dated: December 27, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–33198 Filed 1–4–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Thursday, January 20, 2011, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: December 30, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2010–33262 Filed 1–4–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011284–068.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Donald J. Kassilke, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would increase the authorized size of the agreement's governing board and would update the corporate addresses of American President Lines, Ltd.; APL Co. Pte. Ltd.; and Hyundai Merchant Marine Co., Ltd.

Agreement No.: 011324–020.

Title: Transpacific Space Utilization Agreement.

Parties: American President Lines Ltd./APL Co. Pte Ltd.; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Westwood Shipping Lines; and Yangming Marine Transport Corp.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes Mitsui O.S.K. Lines, Ltd. as a party to the agreement and updates the corporate addresses of American President Lines, Ltd., APL Co. Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; and Yang Ming Marine Transport Corp.

Agreement No.: 011409–018.

Title: Transpacific Carrier Services Inc. Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; COSCO Container Lines Company, Ltd.; Evergreen Lines Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes Mitsui O.S.K. Lines, Ltd. as a party to the agreement and updates the corporate addresses of American President Lines, Ltd.; APL Co. Pte. Ltd.; and Hyundai Merchant Marine Co.

Agreement No.: 011453–007.

Title: Southern Africa Agreement.

Parties: A.P. Moller-Maersk A/S; MSC Mediterranean Shipping Company S.A.; and Safmarine Container Lines N.V.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes the pooling and rate discussion authority, corrects the name of MSC Mediterranean Shipping Company S.A., deletes obsolete language on the duration of Agreement, and changes the name and restates the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 30, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–33343 Filed 1–4–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

Antillean Logistics Center, Inc. (NVO & OFF), 3038 NW North River Drive, Miami, FL 33142. Officer: Sara C. Babun, President/Director/Secretary (Qualifying Individual). Application Type: New NVO & OFF License.

AOC Freight Corporation dba AOC Limited (NVO), 20910 Normandie Avenue, Suite C, Torrance, CA 90502. Officers: Spencer Ho, Vice President/Director/Secretary (Qualifying Individual), Cindy Yim, Director/President/CFO. Application Type: New NVO License.

Balkans Air Corporation (OFF), 1703 Bath Avenue, Brooklyn, NY 11214. Officers: Begator Hila, President (Qualifying Individual), Skender Gashi, CEO. Application Type: New OFF License.

Casey Overseas Corp. (OFF), 110 West Road, Suite 420, Towson, MD 21204. Officers: Melanie C. Dvorak, President/Treasurer (Qualifying Individual), Annette Morgan, Secretary. Application Type: QI Change.

Charter Logistics USA Inc. (NVO), 15929 Gard Avenue, #2, Norwalk, CA 90650. Officer: Ray Kao, CEO/CFO/Secretary/Director (Qualifying Individual), Application Type: New NVO License.

Direct Freight Services LLC (NVO), 1810 NW 51st Place, Hanger 40A, Ft. Lauderdale, FL 33309. Officers: Neil T. Marshall, Member/Chief Executive Manager (Qualifying Individual), Stina Storr, Member/Managing Member. Application Type: New NVO License.

DW Logistics Solutions, Inc. (NVO & OFF), One Cross Island Plaza, #305, Rosedale, NY 11422–3455. Officers: John Y. Wong, Vice President of Sales and Marketing (Qualifying Individual), Hong Guo, President. Application Type: New NVO & OFF License.

Edward Transit Express Group Inc. (NVO), 1448 S. Santa Fe Avenue, Compton, CA 90221. Officer: Mei Mei Zhou, President/Vice President/Secretary/Treasurer (Qualifying Individual). Application Type: Name Change.

Embarque Bandera Shipping, Inc. (NVO), 421 Audoubon Avenue, New York, NY 10033. Officer: Amelio De Jesus Cabrera, President/Secretary (Qualifying Individual). Application Type: New NVO License.

Forbis Logistics, Corp. (NVO & OFF), 1382 NW 78th Avenue, Doral, FL 33126. Officers: Sonia E. Aguayo, Treasurer/Secretary (Qualifying Individual), Oscar Espinosa, President. Application Type: New NVO & OFF License.

Frontline Cargo Logistics, LLC (NVO & OFF), 9920 NW 21th Street, Miami, FL 33172. Officer: Ivonne C. Sola, President (Qualifying Individual). Application Type: New NVO & OFF License.

Globest International Inc. (NVO & OFF), 209 Woodland Avenue, River Edge, NJ 07661. Officers: Jong Yeoul Kim, Senior Vice President (Qualifying Individual), Mijung Kim, President. Application Type: New NVO & OFF License.

Innovation Shipping Inc. (NVO & OFF), 5460 N. Peck Road, Arcadia, CA 91006. Officers: Yolanda L. Nguyen, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO & OFF License.

International Shipping Lines Incorporated (NVO), 2 Thorncliff Park Drive, Unit #28, Toronto, Canada. Officer: Kamran Shaikh, President. Application Type: New NVO License.

King Freight New York Inc (NVO), 1099 Wall Street, Lyndhurst, NJ 07071. Officers: Jerry Wang, Vice President (Qualifying Individual), Loong H. Chang, President/Director. Application Type: New NVO License.

Movage, Inc. (NVO), 135 Lincoln Avenue, Bronx, NY 10454. Officers: Traveler J. Schinz-Devico, VP of International Sales (Qualifying Individual), Bajo Vujovic, Director/President/Treasurer. Application Type: New NVO License.

Move Management International, Inc. (OFF), 6930 NW. 84th Avenue, Doral, FL 33166. Officers: Manuel J. Rojas, Vice President/Secretary/Treasurer (Qualifying Individual), Annette M. Diaz-Rojas, President. Application Type: License Transfer.

Quartz Logistics Inc. (NVO & OFF), 731 S. Garfield Avenue, #2A, Alhambra, CA 91801. Officers: Eva S. Chen, Secretary (Qualifying Individual), Tai Ruenn Wang, President. Application Type: New NVO & OFF License.

Red Arrow Consulting, Inc. dba Red Arrow Logistics (NVO & OFF), 14925 SE Allen Road, #203–B, Bellevue, WA 98006. Officers: Peter A. Lindsey, COO (Qualifying Individual), Lorraine E. Lasater, CEO/President/Secretary/Treasurer. Application Type: New NVO & OFF License.

Shinewell Logistics, Inc. (NVO & OFF), 1861 Western Way, Torrance, CA 90501. Officer: Hseanru aka Stephen H. Lin, President/VP/Secretary/CFO (Qualifying Individual). Application Type: New NVO & OFF License.

TFM International, LLC dba TFM Project Logistics (NVO & OFF), 5905 Brownsville Road, Pittsburgh, PA 15236. Officers: Michael S. Wagner, President (Qualifying Individual), Mark Raymond, CEO. Application Type: New NVO & OFF License.

Toshiba Logistics America, Inc. (NVO & OFF), 9740 Irvine Blvd., Irvine, CA 92618–1608. Officers: Masato Hamazaki, CEO/President (Qualifying Individual), Minoru Tanaka, CFO/Secretary. Application Type: QI Change.

Trade Services USA Inc. (NVO & OFF), 1966 Junipero Avenue, Signal Hill, CA 90755. Officer: Alaaddin Akyol, CEO/CFO/Secretary (Qualifying Individual). Application Type: New NVO & OFF License.

Vegano Shipping & Multi Services Corp. (NVO), 165 Sherman Avenue, New York, NY 10034. Officer: Pedro Sime, President/Secretary/Treasurer/VP (Qualifying Individual). Application Type: New NVO License.

YCT Logistics Inc. (NVO), 9660 Flair Drive, EL Monte, CA 91731. Officers: Terry Tsang, CEO/Secretary/President/Director (Qualifying Individual), Chris Tang, CFO. Application Type: New NVO License.

Dated: December 30, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–33353 Filed 1–4–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date Reissued
021037N	All West Coast Shipping Inc., dba West Coast Shipping, 1065 Broadway Avenue, San Pablo, CA 94806.	November 7, 2010.

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2010–33352 Filed 1–4–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 017572F.

Name: Impex of Doral Logistics, Inc.

Address: 7850 NW. 80th Street, Unit 3, Medley, FL 33166.

Order Published: FR: 11/26/10 (Volume 75, No. 227 Pg. 72825).

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2010–33351 Filed 1–4–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 017080N.

Name: General Cargo & Logistics.

Address: 17828 S. Main Street, Carson, CA 90248.

Date Revoked: November 21, 2010.

Reason: Failed to maintain a valid bond.

License Number: 17715N.

Name: Yurram Corporation dba Starliner Shipping & Travel.

Address: 5305 Church Avenue, Brooklyn, NY 11203.

Date Revoked: November 28, 2010.

Reason: Failed to maintain a valid bond.

License Number: 18429F.

Name: AB Shipping, Inc.

Address: 5428 El Monte Avenue, Temple City, CA 91780.

Date Revoked: November 15, 2010.

Reason: Surrendered license voluntarily.

License Number: 019823NF.

Name: General Logistic Solutions Corp.

Address: 6701 NW. 7th Street, Suite 135, Miami, FL 33126.

Date Revoked: November 25, 2010.

Reason: Failed to maintain valid bonds.

License Number: 020198N.

Name: Pan America Marine Services.

Address: 651 West Homestead Road, No. 3, Sunnyvale, CA 94087.

Date Revoked: November 21, 2010.

Reason: Failed to maintain a valid bond.

License Number: 020445N.

Name: Freight It, Inc.

Address: 11222 La Cienega Blvd., Suite 555, Inglewood, CA 90304.

Date Revoked: November 26, 2010.

Reason: Failed to maintain a valid bond.

License Number: 020824N.

Name: Clarion Logistics USA, Inc.

Address: 1200 NW. 17th Avenue, Suite 18, Delray Beach, FL 33445.

Date Revoked: November 29, 2010.

Reason: Failed to maintain a valid bond.

License Number: 021789F.

Name: Daleray Corporation.

Address: 3350 SW. 3rd Avenue, Suite 207, Ft. Lauderdale, FL 33315.

Date Revoked: November 30, 2010.

Reason: Failed to maintain a valid bond.

License Number: 021844NF.

Name: Transport Logistics, Inc.

Address: P.O. Box 636, Oak Creek, WI 53154.

Date Revoked: November 30, 2010.

Reason: Surrendered license voluntarily.

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2010–33346 Filed 1–4–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0175]

Keystone Holdings, LLC and Compagnie de Saint-Gobain; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 1, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Keystone, File No. 101 0175 to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as

an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/keystone* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the Weblink: *https://ftcpublic.commentworks.com/ftc/keystone.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Keystone, File No. 101 0175 reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Victoria Lippincott (202–326–2983), Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 29, 2010), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement) from Keystone Holdings LLC (''Keystone) and Compagnie de Saint-Gobain (''Saint-Gobain''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects resulting from Keystone's proposed acquisition of certain Advanced Ceramics Business assets from Saint-Gobain (''proposed acquisition). As originally structured, Keystone would have acquired Saint-Gobain's worldwide assets and businesses relating to the manufacture and sale of alumina wear tiles. To resolve the competitive concerns raised by the proposed acquisition, Keystone and Saint-Gobain have re-structured the original transaction to exclude Saint-Gobain's North American alumina wear tile business operated out of a facility in Latrobe, Pennsylvania.

Under the terms of the proposed Consent Agreement, Keystone is required for ten years to obtain prior approval from the Commission for the direct or indirect acquisition of Saint-Gobain's alumina wear tile business in Latrobe or certain other assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced or manufactured in North America. The proposed Consent Agreement also requires that Saint-Gobain for five years provide advance written notice to the Commission prior to leasing or selling the Latrobe, Pennsylvania facility or selling, assigning, or otherwise conveying substantially all its interest in the Saint-Gobain alumina wear tile business. In addition, with limited exceptions, Saint-Gobain is obligated to provide advance written notice to the Commission prior to closing the Latrobe, Pennsylvania facility or ceasing operation or production of alumina wear tiles at the facility.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commissions General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

On June 28, 2010, Keystone and Saint-Gobain entered into a merger agreement under which Keystone proposed to acquire Saint-Gobain's Advanced Ceramics Business, including facilities in Europe, North America, South America, and Asia for a purchase price of $245 million. As originally structured, the assets acquired by Keystone would have included the Latrobe facility and other assets relating to the manufacture and sale of alumina wear tiles. On December 2, 2010, however, in an effort to resolve competitive concerns relating to the original transaction, Keystone and Saint-Gobain amended their agreement to exclude from the sale Saint-Gobain's North American alumina wear tile business.

The Commission's complaint alleges that the initial proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the manufacture and sale of standard and pre-engineered alumina wear tile in North America. Although Saint-Gobain now proposes to retain its North American alumina wear tile business, a credible risk exists that the parties could re-negotiate the sale of Saint-Gobain's alumina wear tile business in the future, or that Saint-Gobain could sell the business upon terms that would reduce competition in the North American alumina wear tile markets. Therefore, the proposed Consent Agreement requires that Keystone obtain the Commission's prior approval in advance of any acquisition of Saint-Gobain's alumina wear tile business or related assets, and requires that Saint-Gobain provide written notice to the Commission prior to selling or ceasing its alumina wear tile business or selling or leasing its Latrobe, Pennsylvania facility. This remedy preserves competition in the North American markets for the manufacture and sale of alumina wear tile.

II. Parties

Keystone is the holding company of CoorsTek, Inc. (''CoorsTek), which is a leading technical ceramics manufacturer, supplying ceramics based products for use in defense, medical, automotive, semiconductor, and power generation applications, among others. Keystone is headquartered in Golden, Colorado with facilities in North America, Europe and Asia. Keystone manufactures and sells alumina wear tile for use in high wear applications at its facilities in Golden, Colorado.

Saint-Gobain is a highly diversified, multinational company, headquartered in Courbevoie, France. The Advanced Ceramics Business includes ceramic components such as hot surface igniters, electro-ceramic parts for household appliances, ceramic balls for high-performance bearings, automobile water pump seals, special components for the semiconductor industry, agricultural spray nozzles, and other dense alumina components, such as alumina wear tile. Saint-Gobain manufactures and sells alumina wear tile out of its Latrobe, Pennsylvania facility. In 2009, Saint-Gobain's Advanced Ceramics Business achieved sales of 135 million euros.

III. The Products and Structure of the Alumina Wear Tile Markets

The Commission's complaint alleges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets poses substantial antitrust concerns in both the pre-engineered and standard alumina wear tile markets, or alternatively, an all alumina wear tile market in North America. Alumina wear tile is used to line material-handling equipment to protect against abrasion and premature wear caused by the materials that pass through the equipment, extending the life of the equipment for years. Although other materials could be used as a wear solution these materials are not viable substitutes for alumina wear tile, as they do not have the unique price and wear attributes that are required in applications where alumina wear tile is commonly used.

The Commission's complaint alleges that the relevant markets within which to analyze the transaction are standard and pre-engineered alumina wear tile, or alternatively, all alumina wear tile. Standard alumina wear tile comes in a variety of predetermined sizes and shapes whereas pre-engineered alumina wear tile is custom made-to-order to fit complex shapes that standard tile sizes cannot accommodate.

The Commission's complaint alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is North America. Successful participation in the market requires an established North American presence, most notably North American sales support and facilities from which to inventory and distribute alumina wear tile. Alumina wear tile companies that do not have an established presence in North America do not effectively compete for the business of U.S. alumina wear tile purchasers.

Keystone and Saint-Gobain are two of three significant suppliers of pre-engineered alumina wear tile and two of four significant suppliers of standard alumina wear tile in North America. In an all alumina wear tile market, Keystone and Saint-Gobain are two of four significant suppliers in North America. The acquisition would increase concentration levels substantially in markets that already are highly concentrated.

IV. Effects of the Acquisition

The Commission's complaint charges that the proposed acquisition would enhance the likelihood of collusion or coordinated interaction among the remaining firms in the market. Certain market conditions, including product homogeneity and the availability of detailed market information about customers and transactions are conducive to the firms reaching terms of coordination and detecting deviations from those terms.

The Commission's complaint also charges that Keystone's acquisition of Saint-Gobain's North American alumina wear tile assets would eliminate actual, direct, and substantial competition between CoorsTek and Saint-Gobain. By increasing CoorsTek's market share substantially, while at the same time eliminating the most significant competitor in the market, an acquisition of Saint-Gobain's North American alumina tile assets likely would allow CoorsTek to unilaterally charge higher prices for alumina wear tile.

The Commission's complaint alleges that significant impediments to entry, expansion or repositioning in the alumina wear tile markets make entry unlikely, untimely and likely unprofitable. The size of the investment and the time needed to enter the relevant markets relative to the size of the overall market is substantial. Entry is made more difficult due to reputational hurdles, and there is uncertainty that an entrant could secure the sales to make the investment profitable. As a result, new entry, expansion, or repositioning by other firms sufficient to achieve a significant market impact is unlikely to ameliorate the harms posed by the proposed transaction.

V. The Proposed Consent Agreement

The proposed Consent Agreement addresses the competitive risks of a future sale of Saint-Gobain's North American alumina tile business to Keystone or others. By imposing certain prior approval and prior notice conditions on Keystone and Saint-Gobain, the remedy serves to ensure that the assets of Saint-Gobain's North American alumina wear tile business will remain, and continue to compete,

in the North American alumina wear tile markets.

Pursuant to the proposed Consent Agreement, for a period of ten years Keystone must obtain Commission approval prior to acquiring, directly or indirectly, Saint-Gobain's alumina wear tile assets. These assets primarily include the Latrobe facility, but also include assets of Saint-Gobain's alumina wear tile business or any interest in assets owned or controlled by Saint-Gobain relating to the research, development, marketing, and sale anywhere in the world of alumina wear tile produced and manufactured in North America.

Pursuant to the proposed Consent Agreement, for a period of five years Saint-Gobain must provide advance written notification to the Commission before selling all or substantially all of its North American alumina wear tile business to any person other than an affiliate. Saint-Gobain also must provide prior notice to the Commission before closing or ceasing operations at the Latrobe facility, subject to certain exceptions for maintenance, construction of improvements, and the like, and for involuntary closures due to force majeure, health and safety emergencies, and other such events.

As part of ensuring the continued viability of Saint-Gobain's alumina wear tile business, Keystone, pursuant to the proposed Consent Agreement, must comply with all terms of alumina wear tile business agreements between Keystone and Saint-Gobain. One of these agreements is a supply agreement for certain types of standard alumina tile produced at the Vinhedo, Brazil facility ("Vinhedo tile) that Keystone will acquire from Saint-Gobain. This supply agreement gives Saint-Gobain access to the alumina wear tile from the Vinhedo facility for a limited interim period, by which time Saint-Gobain will be required to find another source for the Vinhedo tile or produce it internally.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the proposed Consent Agreement, including the proposed remedy, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2010–33245 Filed 1–4–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

Meeting Dates: January 10, 2011, 9 a.m. to 6 p.m. and January 28, 2011, 9:30 a.m.–5 p.m. e.t.

ADDRESSES: The meetings will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC 20201, Room 705A.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T Oellerich (202) 690–8410, *Don.oellerich@hhs.gov.* **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Thursday January 6, 2011 for the meeting on January 10 and Tuesday January 25, 2011 for the meeting on January 28, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION:

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations from Medicare public trustees are on issues they wish the panel to address. This may be followed by HHS staff presentations regarding long range growth. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 28, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–33296 Filed 1–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–0212]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Discharge Survey (NHDS)(OMB# 0920–0212 exp. 10/31/2011)—Revision— National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This three-year clearance request includes hospital recruitment and data collection for 2011, 2012, and 2013 of the redesigned National Hospital Discharge Survey, as well as a pretest of data collection on acute coronary syndrome for a supplement to the NHDS which will be sponsored by the National Heart, Lung and Blood Institute.

The National Hospital Discharge Survey has been conducted continuously by the National Center for Health Statistics, CDC, since 1965. It is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the principal annual source of nationally representative estimates on the characteristics of discharges, lengths of stay, diagnoses, surgical and non-surgical procedures, and patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are measured.

Although the current NHDS is still fulfilling its intended functions, it is based on concepts from the health care delivery system, as well as the hospital and patient universes, of previous decades. It has become clear that a redesign of the NHDS that provides greater depth of information is necessary. Consequently, 2010 will serve as the last year in which the current NHDS will be fielded. Meanwhile, the redesigned NHDS is scheduled to begin in 2011.

A new sample of 500 hospitals drawn for the NHDS will be recruited beginning in June 2011 and continuing through September 2012 (167 hospitals on an annualized basis). In 2011, data collection will begin by collecting the electronic Uniform Bills (UB–04s) from hospitals recruited in 2011 followed by data for all sample facilities for 2012 and 2013. A post induction annual facility questionnaire to update facility information will be collected for two years—2012 and 2013 (333 hospitals on an annualized basis).

The data items to be collected from the UB–04 in the NHDS will include patient level data items including basic demographic information, personal identifiers, name, address, social security number (if available), and medical record number (if available), and characteristics of the discharge including admission and discharge dates, diagnoses, and surgical and non-surgical procedures. Facility level data items include demographic information, clinical capabilities, and financial information. UB–04 data will be transmitted from all 500 hospitals on a quarterly basis.

A pretest of a survey supplement on acute coronary syndrome sponsored by the National Heart Lung and Blood will also be fielded in 2011. The pretest will be conducted in a convenience sample of 32 hospitals (11 hospitals on an annualized basis) and discharges will be identified from the UB–04 codes for a diagnosis of acute myocardial infarction.

Users of NHDS data include, but are not limited to CDC, Congressional Research Office, Office of the Assistant Secretary for Planning and Evaluation (ASPE), American Health Care Association, Centers for Medicare & Medicaid Services (CMS), and Bureau of the Census. Data collected through NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the development and monitoring of goals for the Year 2000 and 2010 Healthy People Objectives. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States.* Other users of these data include universities, research organizations, many in the private sector, foundations, and a variety of users in the print media. There is no cost to respondents other than their time to participate. The total estimated annualized burden is 3,520 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Hospital CEO/CFO	Survey Presentation for the NHDS	167	1	1
Director of health information management (DHIM) or Health information technology (DHIT).	Facility Questionnaire Form for the NHDS.	167	1	4
DHIM or DHIT	Post-Induction Annual Facility Questionnaire.	333	1	2
DHIM or DHIT	Quarterly Transmission of UB–04 Data	500	4	1

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Form	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Acute Coronary Syndrome (ACS) Pretest				
Hospital CEO/CFO	Survey Presentation for the ACS Module for the NHDS.	11	1	1
DHIM or DHIT	Abstraction and Reabstraction for the ACS Module of the NHDS.	11	3	15/60

Dated: December 28, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–33342 Filed 1–4–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 30, 2012.

For information, contact Jeffrey Kohler, PhD, Designated Federal Officer, Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania 15236, Telephone (412) 386–5301 or fax (412) 386–5300.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 27, 2010.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–33341 Filed 1–4–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement Privacy Act of 1974; System of Records

AGENCY: Office of Child Support Enforcement, ACF, HHS.

ACTION: Notice of the rescission, establishment, and amendment of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Office of Child Support Enforcement (OCSE) is publishing notice that it will rescind a notice of a system of records entitled "Location and Collection System," 09–90–0074, establish two new systems of records entitled "OCSE National Directory of New Hires" and "OCSE Debtor File," and amend an existing system of records entitled "OCSE Federal Case Registry of Child Support Orders."

DATES: The Department of Health and Human Services (HHS) invites interested parties to submit written comments on the proposed rescission, establishment and amendment to its systems of records notices until February 4, 2011. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on December 22, 2010 sent reports of the establishment of new systems of records (which included the proposed rescission of an existing system) and an amendment of a system of records to the Committee on Homeland Security and 22 Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The proposed rescission, establishment and amendment described in this notice is effective on February 4, 2011, unless HHS receives comments which result in a contrary determination.

ADDRESSES: Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447, (202) 401–5439.

SUPPLEMENTARY INFORMATION: OCSE's system of records, Location and Collection System (LCS), 09–90–0074, last published at 72 FR 51446 (September 7, 2007), currently maintains the records of the National Directory of New Hires database and the Offset File database. By this notice, OCSE proposes to rescind the notice of the LCS system of records and to separate the NDNH and Offset databases by establishing two new systems of records, the National Directory of New Hires (NDNH), No. 09–80–0381 and the Debtor File, No. 09–80–0383. The NDNH system of records will maintain records currently held in the LCS' NDNH database and the Debtor File will maintain records currently held in the LCS' Offset File database. The separation and redesignation of LCS records is intended to more accurately reflect the purposes for which the records in the system may be used. OCSE also proposes to amend the notice of its system of records, the Federal Case Registry of Child Support Orders (FCR), No. 09–80–0202, last published at 73 FR 20306 (April 15, 2008). A Notice of Proposed Rulemaking to be published in the **Federal Register** for public comment

will request an exemption for the FCR from the provisions of the Privacy Act based on section (k)(2) of the Privacy Act. (5 U.S.C. 552a(k)(2)). The exemption for the FCR will be effective 30 days after publication of the final rule establishing the exemption.

Dated: December 16, 2010.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

SYSTEM NUMBER:

09–80–0381. This system was formerly part of OCSE Location and Collection System HHS, OCSE (09–90–0074).

SYSTEM NAME:

OCSE National Directory of New Hires (NDNH) HHS/ACF/OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who are newly hired "employees" within the meaning of chapter 24 of the Internal Revenue Code of 1986, 26 U.S.C. 3401, whose employers have furnished specified information to a State Directory of New Hires which, in turn, has furnished such information to the National Directory of New Hires pursuant to 42 U.S.C. 653a(g)(2)(A);

2. Individuals who are Federal government employees whose employers have furnished specified information to the National Directory of New Hires pursuant to 42 U.S.C. 653(n). This category does not including individuals who are employees of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission; and

3. Individuals to whom unemployment compensation or wages have been paid and about whom the State Directory of New Hires has furnished such information to the National Directory of New Hires pursuant to 42 U.S.C. 653a(g)(2)(B).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Records pertaining to newly hired employees furnished by a State Directory of New Hires pursuant to 42 U.S.C. 653a(g)(2)(A). Records in the system are the name, address, and Social Security number (SSN) of the employee, the name, address and Federal identification number of the employer of such employee and, at the option of the State, the date of birth, date of hire or State of hire of the employee.

2. Records pertaining to newly hired employees furnished by a Federal department, agency or instrumentality pursuant to 42 U.S.C. 653a(b)(1)(C). Records in the system are the name, address and SSN of the employee and the name, address and the employer identification number of the employer.

3. Records furnished by a State Directory of New Hires pertaining to wages and unemployment compensation paid to individuals pursuant to 42 U.S.C. 653a(g)(2)(B).

4. Records furnished by a Federal department, agency, or instrumentality pertaining to wages paid to individuals pursuant to 42 U.S.C. 653(n).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 653(i).

PURPOSES:

The Office of Child Support Enforcement (OCSE) uses the NDNH primarily to assist States administering programs that improve States' abilities to locate parents, establish paternity, and collect child support. The NDNH is also used to support other programs as specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663): Temporary Assistance for Needy Families; child and family services; foster care and adoption assistance; establishing or verifying eligibility of applicants for, or beneficiaries of benefit programs; recouping payments or delinquent debts under benefit programs; and for certain research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the Federal/State child support program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

Any information defined as "return" or "return information" under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

1. Disclosure for Child Support Purposes

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A) and 653(c), information about the location of an individual or information that would facilitate the discovery of the location of an individual or identifying information about the individual may be disclosed, upon request filed in accordance with law, to an "authorized person" for the purpose of establishing parentage or establishing, setting the amount of, modifying or enforcing child support obligations. Other information that may be disclosed is information about an individual's wages (or other income) from, and benefits of, employment, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual. An "authorized person" is defined under 42 U.S.C. 653(c) as follows: (1) Any agent or attorney of a State who has a duty or authority to seek or recover any amounts owed as child and spousal support or to seek to enforce orders providing child custody or visitation rights; (2) a court which has authority to issue an order against a noncustodial parent for support of a child, or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court; (3) the resident parent, legal guardian, attorney, or agent of a child that is not receiving assistance under a State program funded under title IV–A of the Social Security Act (Temporary Assistance to for Needy Families); and (4) a State agency that is administering a program operated under title IV–B (child and family services programs) or IV–E (Foster Care and Adoption Assistance programs) of the Social Security Act.

2. Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation

Pursuant to 42 U.S.C. 653(b)(1)(A), upon request of an "authorized person," as defined in 42 U.S.C. 663(d)(2), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any State or Federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

3. Disclosure to Department of State under International Child Abduction Remedies Act

Pursuant to 42 U.S.C. 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with section 7 of the International Child Abduction Remedies Act, 42 U.S.C. 11601 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant.

4. Disclosure to a Foreign Reciprocating Country for Child Support Purposes

Pursuant to 42 U.S.C. 659a(c)(2), information on the State of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration may be disclosed to a foreign reciprocating country.

5. Disclosure to the Treasury for Tax Administration Purposes

Pursuant to 42 U.S.C. 653(i)(3), information may be disclosed to the Secretary of the Treasury for purposes of administering 26 U.S.C. 32 (earned income tax credit), administering 26 U.S.C. 3507 (advance payment of earned income tax credit) or verifying a claim with respect to employment in a tax return.

6. Disclosure to the Social Security Administration for Verification

Pursuant to 42 U.S.C. 653(j)(1), the names, SSNs, and birth dates of individuals about whom information is maintained may be disclosed to the Social Security Administration to the extent necessary for verification of the information by the Social Security Administration.

7. Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order

Pursuant to 42 U.S.C. 653(j)(2), the results of a comparison between records in this system and the Federal Case Registry of Child Support Orders may be disclosed to the State IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification or enforcement of a support order.

8. Disclosure to State Agencies Operating Specified Programs

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a State to the extent and with the frequency that the Secretary determines to be effective in assisting the State to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 639 (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679A (Title IV–E of the Social Security Act) and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

9. Disclosure to the Commissioner of Social Security

Pursuant to 42 U.S.C. 653(j)(4), information may be disclosed to the Commissioner of Social Security for the purpose of verifying eligibility for Social Security Administration programs and administering such programs.

10. Disclosure for Authorized Research Purposes

Pursuant to 42 U.S.C. 653(j)(5), data in the NDNH, including information reported by employers pursuant to 42 U.S.C. 653a(b), may be disclosed, without personal identifiers, for research purposes found by the Secretary to be likely to contribute to achieving the purposes of 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

11. Disclosure to Secretary of Education for Collection of Defaulted Student Loans

Pursuant to 42 U.S.C. 653(j)(6), the results of a comparison of information in this system with information in the custody of the Secretary of Education may be disclosed to the Secretary of Education for the purpose of collection of debts owed on defaulted student loans, or refunds on overpayments of grants, made under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.* and 42 U.S.C. 2751 *et seq.*) and, after removal of personal identifiers, for the purpose of conducting analyses of student loan defaults.

12. Disclosure to Secretary of Housing and Urban Development for Verification Purposes

Pursuant to 42 U.S.C. 653(j)(7), information regarding an individual participating in a housing assistance program (United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); 12 U.S.C. 1701s, 1701q, 1715l(d)(3), 1715l(d)(5), 1715z–1; or 42 U.S.C. 8013) may be disclosed to the Secretary of Housing and Urban Development for the purpose of verifying the employment and income of the individual and, after removal of personal identifiers, for the purpose of conducting analyses of the employment and income reporting of such individuals.

13. Disclosure to State Unemployment Compensation Agency for Program Purposes

Pursuant to 42 U.S.C. 653(j)(8), information on an individual for whom a State agency administering an unemployment compensation program under Federal or State law has furnished the name and Social Security number, and information on such individual's employer, may be disclosed to the State agency for the purposes of administering the unemployment compensation program.

14. Disclosure to Secretary of the Treasury for Debt Collection Purposes

Pursuant to 42 U.S.C. 653(j)(9), information pertaining to a person who owes the United States delinquent nontax debt and whose debt has been referred to the Secretary of the Treasury in accordance with 31 U.S.C. 3711(g), may be disclosed to the Secretary of the Treasury for purposes of collecting the debt.

15. Disclosure to State Agency for Food Stamp Program Purposes

Pursuant to 42 U.S.C. 653(j)(10), information on an individual and the individual's employer may be disclosed to a State agency responsible for administering a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) for the purposes of administering the program.

16. Disclosure to the Secretary of Veterans Affairs for Verification Purposes

Pursuant to 42 U.S.C. 653(j)(11), information about an individual applying for or receiving the following benefits, compensation or services may be disclosed to the Secretary of Veterans Affairs for the purpose of verifying the employment and income of the individual and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of such individuals: (i) Needs-based pension benefits provided under 38 U.S.C. chapter 15, or under any other law administered by the Secretary of Veterans Affairs; (ii) parents' dependency and indemnity compensation provided under 38 U.S.C. 1315; (iii) health care services furnished under subsections 38 U.S.C. 1710(a)(2)(G), (a)(3), (b); or (iv) compensation paid under 38 U.S.C. chapter 11, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

17. Disclosure for Law Enforcement Purpose

Records may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for identifying, investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

18. Disclosure to Department of Justice

Records may be disclosed to support the Department of Justice when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

19. Disclosure to Court or Adjudicative Body

Records may be disclosed to a court or adjudicative body when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

20. Disclosure to Contractor to Perform Duties

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

21. Disclosure in the Event of a Security Breach

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records and the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the NDNH are stored electronically at the Social Security Administration's National Computer Center. Historical logs and system backups are stored off-site at an alternate location.

RETRIEVABILITY:

Records maintained in the NDNH are retrieved by the SSN of the individual to whom the record pertains.

SAFEGUARDS:

Specific administrative, technical and physical controls are in place to ensure that the records collected and maintained in the NDNH are secure from unauthorized access.

Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment.

All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records maintained in the NDNH are retained for 24 months after the date of entry and then deleted from the database pursuant to 42 U.S.C. 653(i)(2)(A). In accordance with 42 U.S.C. 653(i)(2)(B), OCSE shall not have access for child support enforcement purposes to quarterly wage and unemployment insurance information in the NDNH if 12 months have elapsed since the information is provided by a State Directory of New Hires pursuant to 42 U.S.C. 653A(g)(2)(B) and there has not been a match resulting from the use of such information in any information comparison. Notwithstanding these retention and disposal requirements, OCSE may retain such samples of data entered into the NDNH as OCSE may find necessary to assist in carrying out its responsibility to provide access to data in the NDNH for research purposes found by OCSE to be likely to contribute to achieving the purposes of Part A or Part D of Title IV of the Act, but without personal identifiers, pursuant to 42 U.S.C. 653(i)(2)(C), (j)(5). Samples are retained only so long as necessary to complete such research.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, 4th Floor East, SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) Include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise

provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NUMBER:

09–80–0383. This system was formerly part of OCSE Location and Collection System HHS, OCSE (09–90–0074).

SYSTEM NAME:

OCSE Debtor File HHS/ACF/OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owing past-due child support, as reported by a State agency administering a child support enforcement program pursuant to 42 U.S.C. 651 through 669b (Title IV, Part D, of the Social Security Act).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Records pertaining to individuals owing past-due child support, as indicated by a State agency administering a child support enforcement program. Categories of records in the system are the name and Social Security number (SSN) of such individual, the amount of past-due child support owed by the individual, adjustments to such amount, information on each enforcement remedy applicable to the individual to whom the record pertains, as indicated by a State IV–D child support agency; the amount of past-due support collected as a result of each such remedy; and a history of updates by the State agency to the records.

2. Records of the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and information maintained by the Secretary of the Treasury concerning the following amounts payable to such individuals: refunds of Federal taxes; salary, wage and retirement benefits; vendor payments and expense reimbursement payments and travel payments;

3. Records of the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and information provided by financial institutions doing business in two or more States, including the name, record address, SSN, or other identifying number of each such individual and information about any account held by the individual and maintained at such institution; and

4. Records of the results of a comparison between records in the Debtor File pertaining to individuals owing past-due child support and information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments to collect past-due child support from those sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652, 653 and 664.

PURPOSES:

The primary purpose of the Debtor File is to improve States' abilities to collect past-due child support by identifying sources of income and assets of individuals owing past-due child support. The Debtor File facilitates OCSE's execution of its responsibility to perform the following duties: assisting the Department of State with respect to denial, revocation or limitation of passports of individuals owing arrearages of child support in an amount exceeding $2,500 pursuant to 42 U.S.C. 652(k)(1); through the Federal Parent Locator Service (FPLS), to aid State IV–D agencies and financial institutions doing business in two or more States to identify sources of income at financial institutions for individuals owing past-due child support pursuant to 42 U.S.C. 652(l). (*See* also 42 U.S.C. 666(a)(17)(A)(i)); through the FPLS, to compare information regarding individuals owing past-due support with specified information maintained by insurers (or their agents) and furnish information resulting from the data matches to the State agencies responsible for collecting child support from the individuals pursuant to 42 U.S.C. 652(l) (to be redesignated 652(m)); to assist the Secretary of the Treasury in withholding from refunds of Federal taxes paid an amount owed by an individual owing past-due child support pursuant to 42 U.S.C. 664; and to assist State IV–D child support enforcement agencies in the collection of past-due child support through the administrative offset of certain Federal payments pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), Executive Order 13019, and 31 CFR 285. OCSE operates the FPLS pursuant to 42 U.S.C. 652(a)(9), and 42 U.S.C. 653(a)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

Any information defined as "return" or "return information" under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

1. Disclosure to the Treasury to Withhold Past-Due Support

Pursuant to 42 U.S.C. 664 and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), information pertaining to an individual owing past-due child support may be disclosed to the Secretary of the Treasury for the purpose of withholding the past-due support from amounts payable as refunds of Federal taxes; salary, wage and retirement payments; vendor payments; and expense reimbursement payments and travel payments.

2. Disclosure to State Department for Passport Purposes

Pursuant to 42 U.S.C. 652(k), information pertaining to an individual owing past-due child support in a specified amount, as certified by a State child support enforcement agency, may be disclosed to the Secretary of State for the purpose of revoking, restricting, limiting, or denying a passport to the individual.

3. Disclosure to Financial Institution to Collect Past-Due Support

Pursuant to 42 U.S.C. 652(l), information pertaining to an individual owing past-due child support may be disclosed to a financial institution doing business in two or more States to identify an individual who maintains an account at the institution for the purpose of collecting past-due support.

4. Disclosure to Insurer To Collect Past-Due Support

Pursuant to 42 U.S.C. 652(l) (to be redesignated (m)), information pertaining to an individual owing past-due child support may be disclosed to an insurer (or its agent) to identify an individual with an insurance claim, settlement, award or payment for the purpose of collecting past-due support.

5. Disclosure to State Child Support Enforcement Agency of Comparison Information for Assistance in Collecting Past-Due Support

Pursuant to 42 U.S.C. 664 and the Debt Collection Improvement Act 1996 (Pub. L. 104–134), the results of a comparison of information pertaining to an individual owing past-due child support and information maintained by the Secretary of Treasury pertaining to amounts payable to the individual for refunds of Federal taxes; salary, wage and retirement benefits; vendor payments; expense reimbursement payments; or travel payments may be disclosed to a State IV–D child support agency for the purpose of assisting State agencies in collecting past-due support.

5. Disclosure to Multistate Financial Institution for Assistance in Collecting Past-Due Support

Pursuant to 42 U.S.C. 652(l), the results of a comparison between information pertaining to an individual owing past-due child support and information on account holders provided by multistate financial institutions may be disclosed to a State child support agency for the purpose of assisting State agencies in collecting past-due support.

7. Disclosure of Insurance Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due Support

Pursuant to 42 U.S.C. 652(l) (to be redesignated subsection(m)), the results of a comparison between information pertaining to an individual owing past-due child support and information maintained by an insurer (or its agent) concerning insurance claims, settlements, awards, and payments may be disclosed to a State IV–D child support agency for the purpose of assisting State agencies in collecting past-due support.

8. Disclosure for Law Enforcement Purpose

Records may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

9. Disclosure to Department of Justice

Records may be disclosed to support the Department of Justice when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

10. Disclosure to Court or Adjudicative Body

Records may be disclosed to a court or adjudicative body when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

11. Disclosure to Contractor to Perform Duties

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of their duties or activities for HHS in accordance with law and with the contract.

12. Disclosure in the Event of a Security Breach

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records and the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the Debtor File are stored electronically at the Social Security Administration's National Computer Center. Historical logs and system backups are stored off-site at an alternate location.

RETRIEVABILITY:

Records maintained in the Debtor File are retrieved by the SSN of the individual to whom the record pertains; provided, however, that for the purpose of comparing information in the Debtor File with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards and payments, records in the Debtor File may be retrieved by the name of the individual and either the date of birth or the address of the individual.

SAFEGUARDS:

Specific administrative, technical, and physical controls are in place to ensure that the records collected and maintained in the Debtor File are secure from unauthorized access.

Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment.

All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records maintained in the Debtor File are retained until the IV–D child support case is in deleted status and there has been no activity on the case for seven years and are then deleted. Records resulting from a comparison between the Debtor File and both records maintained by a financial institution doing business in two or more States and records maintained by an insurer (or its agent) concerning insurance claims, settlements, awards and payments, are retained for one year and are then deleted; provided, however, that after removal of personal

identifiers, the results of a comparison may be retained for such period necessary to conduct analyses for the purpose of estimating potential collections of past-due support by State child support agencies and are then deleted. If an extract from the Debtor File is disclosed for a routine use to an authorized user, including the Secretary of the Treasury for the purpose of withholding past-due support from amounts payable as refunds of Federal taxes or specified payments, a copy of the extract is retained for one year and is then deleted.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, 4th Floor East, SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or e-mail address, SSN, and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes in not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State and from multistate financial institutions and insurers (or their agents).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NUMBER:

09–80–0202.

SYSTEM NAME:

OCSE Federal Case Registry of Child Support Orders (FCR) HHS/ACF/OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Center, Social Security Administration, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in child support cases in which services are being provided by the State IV–D child support agencies, and/or individuals who are subject to child support orders established or modified on or after October 1, 1998, and the children of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FCR collects and maintains records provided by State child support registries. These records include abstracts of support orders and information from child support cases. The records may include the following information: name, Social Security number (SSN), State case identification number, State Federal Information Processing Standard (FIPS) code, county code, case type (cases in which services are being provided by the State child support agencies under Title IV–D of the Social Security Act and those cases in which services are not being provided by the State child support agencies), sex, date of birth, mother's maiden name, father's name, participant type (custodial party, noncustodial parent, putative father, child), family violence indicator (domestic violence or child abuse), indication of whether a child support or paternity order is in effect, purpose of request, source of location information. These records are maintained within the FCR and are regularly compared (matched) to the National Directory of New Hires (NDNH) and other Federal agencies' databases to locate information for the State child support agencies or other authorized persons.

The records disseminated, depending upon the requestor's specific authority, may include information retrieved from the FCR, from the NDNH, or from other Federal agencies. Records from the NDNH and other agencies disseminated through the FCR may include categories of information such as name, SSN, address, phone number, employer, employment status and wages, retirement status and pay, assets, military status and pay, Federal benefits status and amount, representative payees, unemployment status and amount, children's health insurance, incarceration status, financial institution accounts, assets, and date of death. The FCR also contains information related to those categories of records; for example, the date of receipt of Federal benefits.

The FCR also maintains: (1) Records (logs) of transactions involving the receipt of locate requests and the dissemination of requested information; (2) copies of the disseminated information for audit purposes; and (3) copies of certain disseminated locate information for the purpose of electronically filtering and suppressing the transmission of redundant locate information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 653(h), 652(a)(9), 653(a)(1).

PURPOSES:

The Office of Child Support Enforcement (OCSE) uses the FCR primarily to assist States in administering programs under 42 U.S.C. 651 to 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) to improve States' abilities to locate parents and collect child support. OCSE is required to compare records transmitted to or maintained within the FCR to records maintained within the NDNH and other Federal agencies' databases and

discloses information about the individuals within the records to State child support agencies or other authorized persons. The information assists State child support agencies or other authorized persons by locating individuals and their employment and asset information who are involved in child support cases. The FCR also conducts FCR to FCR comparisons to locate information about individuals who are involved in child support cases in more than one State and provides the information to those States. Additional purposes of the FCR are specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663 and include assisting States in administering programs under 42 U.S.C. 601 to 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families); assisting States in carrying out their responsibilities under child and family services programs operated under 42 U.S.C. 621 through 639 (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679A (Title IV–E of the Social Security Act); providing locate information (State of residence) pertaining to individuals sought pursuant to the Convention on the Civil Aspects of International Child Abduction to authorized persons in a Central Authority; to assist the Attorney General of the United States in locating any parent or child for the purpose of enforcing State or Federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination; and to assist the Secretary of the Treasury in administering the sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children. FCR records may also be disclosed for research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the Federal/State child support program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

If any record contains a "family violence indicator" associated to the record by State child support agencies if there is reasonable evidence of domestic violence or child abuse, and that disclosure could be harmful to the party or the child, the record may only be disclosed as determined by a court as provided in 42 U.S.C. 653(b)(2).

Any information defined as "return" or "return information" under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

1. Disclosure for Child Support Purposes

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A), and 653 (c), information about the location of an individual or information that would facilitate the discovery of the location of an individual may be disclosed, upon request filed in accordance with law, to an "authorized person" for the purpose of establishing parentage or establishing, setting the amount of, modifying or enforcing child support obligations. Information disclosed may include information about an individual's wages (or other income) from, and benefits of, employment, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual. An "authorized person" is defined under 42 U.S.C. 653(c) as follows: (1) Any agent or attorney of a State who has a duty or authority to seek or recover any amounts owed as child and spousal support or to seek to enforce orders providing child custody or visitation rights; (2) a court which has authority to issue an order against a noncustodial parent for support of a child, or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court; (3) the resident parent, legal guardian, attorney, or agent of a child that is not receiving assistance under a State program funded under title IV–A of the Social Security Act (Temporary Assistance to/for Needy Families); and (4) a State agency that is administering a program operated under title IV–B (child and family services programs) or IV–E (Foster Care and Adoption Assistance programs) of the Social Security Act.

2. Disclosure to any Department, Agency, or Instrumentality of the United States or of any State to Locate an Individual or Information Pertaining to an Individual

Pursuant to 42 U.S.C. 653(e)(1), information from the FCR (names and SSNs) may be disclosed to any department, agency, or instrumentality of the United States or of any State in order to obtain information for an "authorized person" as defined in 42 U.S.C. 653(c) which pertains to an individual's location, wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); on the type, status, location, and amount of any assets of, or debts owed by or to, the individual. An "authorized person" is defined under 42 U.S.C. 653(c) as follows: (1) Any agent or attorney of a State who has a duty or authority to seek or recover any amounts owed as child and spousal support or to seek to enforce orders providing child custody or visitation rights; (2) a court which has authority to issue an order against a noncustodial parent for support of a child, or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court; (3) the resident parent, legal guardian, attorney, or agent of a child that is not receiving assistance under a State program funded under title IV–A of the Social Security Act (Temporary Assistance to for Needy Families); and (4) a State agency that is administering a program operated under title IV–B (child and family services programs) or IV–E (Foster Care and Adoption Assistance programs) of the Social Security Act.

3. Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation

Pursuant to 42 U.S.C. 653(b)(1)(A), upon request of an "authorized person," as defined in 42 U.S.C. 663(d)(2), or upon request of the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, pursuant to 42 U.S.C. 663(f), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any State or Federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination. "Authorized person" is defined in 42 U.S.C. 663(d)(2) as (A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination; (B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and (C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

4. Disclosure to the Social Security Administration for Verification

Pursuant to 42 U.S.C. 653(j)(1), the names, SSNs, and birth dates of individuals about whom information is maintained may be disclosed to the Social Security Administration to the extent necessary for verification of the information by the Social Security Administration.

5. Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order

Pursuant to 42 U.S.C. 653(j)(2)(B), the results of a comparison between records in this system and the National Directory of New Hires may be disclosed to the State IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order.

6. Disclosure to State Agencies Operating Specified Programs

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a State to the extent and with the frequency that the Secretary determines to be effective in assisting the State to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 639 (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679A (Title IV–E of the Social Security Act) and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

7. Disclosure to Department of State under International Child Abduction Remedies Act

Pursuant to 42 U.S.C. 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with Section 7 of the International Child Abduction Remedies Act, 42 U.S.C. 11601 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant.

8. Disclosure to Secretary of the Treasury for Certain Tax Purposes

Pursuant to 42 U.S.C. 653(h)(3), information may be disclosed to the Secretary of Treasury for the purpose of administering sections of the Internal Revenue Code which grant tax benefits based on support or residence of children.

9. Disclosure for Authorized Research Purposes

Pursuant to 42 U.S.C. 653(j)(5), data in the FCR may be disclosed, without personal identifiers, for research purposes found by the Secretary to be likely to contribute to achieving the purposes of 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

10. Disclosure to a Foreign Reciprocating Country for Child Support Purposes

Pursuant to 42 U.S.C. 659a(c)(2), information on the State of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration may be disclosed to a foreign reciprocating country.

11. Disclosure for Law Enforcement Purpose

Records may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for identifying, investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

12. Disclosure to Department of Justice

Records may be disclosed to support the Department of Justice when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

13. Disclosure to Court or Adjudicative Body

Records may be disclosed to a court or adjudicative body when: (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

14. Disclosure to Contractor to Perform Duties

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

15. Disclosure in the Event of a Security Breach

Records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records and the information disclosed is relevant and necessary for that assistance.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically at the Social Security Administration's National Computer Center. Historical logs and system backups are stored off-site at an alternate location.

RETRIEVABILITY:

Records can be retrieved by an identification number assigned to a child support case by the State child support agency or an SSN of an individual.

SAFEGUARDS:

Specific administrative, technical and physical controls are in place to ensure that the records collected and maintained in the FCR are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The

records are processed and stored in a secure environment.

All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

(1) Records provided from State child support agencies. (a) Electronic records furnished by the State child support agency containing child support case and order information (input files) are retained for 60 days and then deleted. (b) State agency records (as posted to the FCR) remain within the FCR until removed, upon notification by the State agency that the case is closed and notifies OCSE to remove it from the FCR, provided that, upon request, a sample may be retained for research purposes found by OCSE to be likely to contribute to achieving the purposes of child support programs or the TANF program, but without personal identifiers. (c) Records pertaining to closed cases are archived on the fiscal year basis and retained for two years. Family violence indicators are removed from the individual's record, upon request by the State that initiated the indicator. (2) Locate requests and match results. (a) Locate requests submitted by State child support agencies and other authorized persons are retained for 60 days and are then deleted. (b) Audit trail records of locate requests and disclosures of match results pursuant to those requests, which include indications of which Federal agencies were contacted for locate information, whether information was located, and the type(s) of information returned to the requesting entity are archived once a year based on the fiscal year. The records are retained for two completed fiscal years and then destroyed. These records indicate the type of information located for the authorized user, not the information itself. (c) Records containing information from the NDNH or from other agencies obtained pursuant to locate requests are provided to authorized persons through the FCR. Copies of records provided are then retained within the FCR for the purpose of electronically filtering and suppressing redundant information from being provided. NDNH information is retained within the FCR for one year and information from other agencies is retained for up to three years. Thereafter such information is deleted. (3) Match results generated as a result of FCR to FCR comparisons which locate individuals who are participants in child support cases or orders in more than one State are transmitted to the relevant States. Copies of FCR to FCR match results are retained for 60 days and then deleted. (4) Any record relating or potentially relating to a fraud or abuse investigation or a pending or ongoing legal action including a class action, is retained until conclusion of the investigation or legal action. (5) Copies of the FCR records transmitted annually to the IRS for the purpose of administering the earned income tax credit (routine use 12) are retained for one year and then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and the request must be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, SSN, and address of the individual, and should be signed by the individual to whom such information pertains; (2) identify the system of records that the individual believes includes his or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in HHS's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Records maintained within the FCR are furnished by State child support agencies. Records disseminated from the FCR for the purpose of providing locate information from the NDNH and other Federal agencies are furnished by departments, agencies, or instrumentalities of the United States or any State, employers, financial institutions, and insurers or their agents. Records maintained for the purpose of filtering redundant data are also furnished by these sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The portions of this system consisting of investigatory material compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection and to the limitation in 42 U.S.C. 653(b)(2): 5 U.S.C. 552a(c)(3) and (d).

[FR Doc. 2010–33295 Filed 1–4–11; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0634]

Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection and Differentiation of Methicillin-Resistant Staphylococcus aureus and Staphylococcus aureus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Establishing the Performance Characteristics of Nucleic Acid-Based *In vitro* Diagnostic Devices for the Detection and Differentiation of Methicillin-Resistant *Staphylococcus aureus* (MRSA) and *Staphylococcus aureus* (SA)." The draft guidance document provides industry and Agency staff with updated recommendations for studies to establish the analytical and clinical performance of nucleic acid-based in vitro diagnostic devices (IVDs) intended for the detection and differentiation of methicillin-resistant *Staphylococcus aureus* (MRSA) and *Staphylococcus aureus* (SA). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by *April 5, 2011.*

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Establishing the Performance Characteristics of Nucleic Acid-Based *In vitro* Diagnostic Devices for the Detection and Differentiation of Methicillin-Resistant *Staphylococcus aureus* (MRSA) and *Staphylococcus aureus* (SA)" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Li Li, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5558, Silver Spring, MD 20993–0002, 301–796–6200.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing the draft guidance to provide industry and Agency staff with recommendations for studies to establish the analytical and clinical performance of nucleic acid-based IVDs intended for the detection and differentiation of MRSA and SA. These devices are used to aid in the prevention and control of MRSA/SA infections in healthcare settings. This document is limited to studies intended to establish the performance characteristics of devices that detect the MRSA/SA genome (nucleic acid). It does not address detection of MRSA/SA antigens or serological response from the host to the MRSA/SA antigens, nor does it address establishing performance of non-MRSA/SA components of multi-analyte or multiplex devices.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on establishing the performance characteristics of nucleic acid-based IVDs for the detection and differentiation of MRSA and SA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive "Establishing the Performance Characteristics of Nucleic Acid-Based *In vitro* Diagnostic Devices for the Detection and Differentiation of Methicillin-Resistant *Staphylococcus aureus* (MRSA) and *Staphylococcus aureus* (SA)," you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1722 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR 50.23 have been approved under OMB control number 0910–0586; and the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130.

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–33292 Filed 1–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0636]

Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection of Antibodies to Borrelia Burgdorferi; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of Antibodies to *Borrelia burgdorferi*." FDA is issuing this draft guidance to provide industry and agency staff with recommendations for studies to establish the analytical and clinical performance of in vitro

diagnostic devices (IVDs) intended for the detection of antibodies to *Borrelia burgdorferi.* These devices are used to aid in the diagnosis of Lyme disease. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 5, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of Antibodies to *Borrelia burgdorferi*" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Prasad Rao, Center for Devices and Radiological Health Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5508, Silver Spring, MD 20993–0002, 301–796–6203.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance recommends studies for establishing the performance characteristics of in vitro diagnostic devices for the detection of antibodies to *B. burgdorferi* in human serum, plasma, and blood. These devices are used to aid in the diagnosis of Lyme disease. This document does not apply to *B. burgdorferi* nucleic acid amplification assays. A manufacturer who intends to market an in vitro device for the detection of antibodies to *B. burgdorferi* must conform to the general controls of the Federal Food, Drug, and Cosmetic Act (FD&C Act) and, unless exempt, obtain premarket clearance or approval prior to marketing the device.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the Agency's current thinking on establishing the performance characteristics of in vitro diagnostic devices for the detection of antibodies to *B. burgdorferi.* It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive "Draft Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of *In Vitro* Diagnostic Devices for the Detection of Antibodies to *Borrelia burgdorferi,*" you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1721 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 42 CFR 493.15 have been approved under OMB control number 0910–0598; the collections of information 21 CFR 50.23 have been approved under OMB control number 0910–0586 and the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130.

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–33293 Filed 1–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 18–19, 2011.

Open: January 18, 2011, 1 p.m. to 4:45 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C, Room 6, Bethesda, MD 20892.

Closed: January 19, 2011, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C, Room 6, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178, 301/496–8230, *kerrme@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 29, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33331 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel K99.

Date: February 3, 2011.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel ITVC Conflicts.

Date: February 9, 2011.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–3599, *elight@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Conte Centers for Basic and Translational Mental Health Research.

Date: February 25, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Rebecca C Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 29, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33330 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: March 14–16, 2011.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott, 900 W. Olympic Blvd., Los Angeles, CA 90015.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: December 29, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33325 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: January 19, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National

Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: December 29, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33323 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Gastrointestinal Pathophysiology-2.

Date: January 25, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral And Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: January 27–28, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Luxury Hotel and Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.

Date: January 28, 2011.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise R Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: February 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Suites Palm Springs, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Larry Pinkus, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: February 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Bernard F Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: February 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Kirk Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Edwin C Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James J Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Parc 55 Wyndham Union Square Hotel, 55 Cyril Magnin Street, San Francisco, CA 94102.

Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Los Angeles Century City Hotel, 2151 Avenue of the Stars, Los Angeles, CA 90067.

Contact Person: Patrick K Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Maqsood A Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Risk, Prevention and Intervention for Addictions Study Section.

Date: February 3–4, 2011.

Time: 8 a.m.. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott-Long Beach Downtown, 500 East First Street, Long Beach, CA 90802.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Suites Palm Springs, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Lee S Mann, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Joanne T Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Barbara J Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—1 Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Cathy Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1191, *wedeenc@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Physiology of Obesity and Diabetes Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: February 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Daniel F McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33322 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: March 3, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-wing, 6th Floor, Conference Rooms, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33321 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee.

Date: March 3–4, 2011.

Time: 4 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, Scientific Review Office, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33320 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ADCC Meeting.

Date: February 24–25, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33319 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Projects in MRSA.

Date: January 12, 2011.

Time: 3:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3246, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33239 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: February 1, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: The Future of Cancer Research: Accelerating Scientific Innovation.

Place: Grand Hyatt Atlanta, 3300 Peachtree Road, NE., Atlanta, GA 30305.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33291 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 Cancer Institute Special Emphasis Panel; SPORE in Mesothelioma, Lung, Breast and Ovarian Cancers.

Date: February 2–3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Wlodek Lopaczynski, M.D., PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Molecular Diagnostics Assay to Detect Basal-like Breast Cancer.

Date: February 15, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 703, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Systems for Automated Storage, Analysis, and Reporting of Objective Behavioral Exposures.

Date: February 16–17, 2011.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen K Schwartz, E.D.D., M.B.A., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Collaborative Research in Integrative Cancer Biology and the Tumor Microenvironment.

Date: February 16, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8055A, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Zhiqiang Zou, M.D., PhD, Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8055A, MSC 8329, Bethesda, MD 20852, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Smartphone Applications for Cancer Prevention and Control.

Date: February 17, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen K Schwartz, E.D.D., M.B.A., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Nanotechnology Sensing Platforms.

Date: March 2, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technology Development.

Date: March 2–3, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel;

Nanotechnology Therapeutics and Theranostics.

Date: March 3, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Blood-based Methods for the Detection of Cancer Recurrence in Post-Therapy Breast Cancer Patients.

Date: March 3, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 703, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; High Level Programming Language to Expedite Development of User Interfaces.

Date: March 8, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 607, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Non-Coding RNAs and Cancer.

Date: March 10, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Thomas M Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Health Information Technology to Facilitate Patient-Centered Communication in Cancer Related Care.

Date: March 10, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 607, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Multi-Center Clinical Trials.

Date: March 14, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8103, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Timothy C. Meeker, M.D., PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, (301) 594–1279, *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33287 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Therapeutic Strategies for Cancer.

Date: February 2–4, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Majed M. Hamawy, M.B.A., PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; K99 and T32 Review.

Date: February 22, 2011.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sergei Radaev, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8117, Bethesda, MD 20892, 301–435–5655, *sradaev@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 2010.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–33285 Filed 1–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–20]

Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010; Resident Opportunity and Self-Sufficiency (ROSS)—Service Coordinators Program; Extension of Application Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for HUD's Fiscal Year (FY) 2010 Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program; Extension of Application Due Date.

SUMMARY: On October 21, 2010, HUD posted on *http://www.Grants.gov,* its Notice of Funding Availability (NOFA) for the FY2010 Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program. The NOFA establishes an application due date of Monday, February 21, 2011, which inadvertently falls on the federal holiday of Washington's Birthday (commonly referred to as Presidents Day). To help ensure that applicants have sufficient time to submit their applications, are not deprived, this notice announces that HUD has posted an extension of the application due date on *http://www.Grants.gov*. The new deadline for submission of applications is Wednesday, February 23, 2011. Applicants do not need to download a new application or resubmit their applications as a result of this notice.

DATES: The application deadline date is February 23, 2011. Applications submitted through *http://www.grants.gov* must be received by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Applications submitted to Grants.gov go through a validation process before they are accepted by the Grants.gov system. Please allow time for this process to ensure that you meet the timely receipt requirements. Please see the 2010 General Section for instructions for timely receipt, including actions to take if the application is rejected. Applicants should carefully read the section titled "APPLICATION and SUBMISSION INFORMATION" in the 2010 General Section for electronic application submission and receipt requirements.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in Section VII of this program NOFA. Prior to the application deadline, program staff will be available to provide general guidance, but not guidance with actually preparing the application. Questions regarding the 2010 General Section should be directed to the Office of Departmental Grants Management and Oversight at 202–708–0667 (this is not a toll-free number) or the NOFA Information Center at 800–HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except Federal holidays.

Dated: December 29, 2010.

Milan Ozdinec,

Deputy Assistant Secretary for Public Housing and Indian Housing.

[FR Doc. 2010–33302 Filed 1–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–35]

Notice of Funding Availability (NOFA) for Fiscal Year 2010; Rural Innovation Fund Program; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, CPD.

ACTION: Notice of technical correction.

SUMMARY: On December 22, 2010, HUD posted on *http://www.Grants.gov* its Notice of Funding Availability (NOFA) for HUD's FY 2010 Rural Innovation Fund Program, "Rural Fund." Today's **Federal Register** publication announces that HUD has posted on *http://www.Grants.gov* a technical correction that, most significantly, corrects the application due date and corrects the maximum funding amounts for Category 1 proposals. HUD has also corrected an incorrect reference to a "Revolving Fund grant" rather than a "Rural Fund grant." The revised NOFA can be found and downloaded from *http://www.Grants.gov*, using the CFDA number for that program, 14.263.

DATES: The correct application deadline date is February 23, 2011. Applications must be received by Grants.gov by 11:59:59 p.m. eastern time on the deadline date. See the General Section for timely receipt requirements. All information required to complete the application is in the General Section and this NOFA. Applicants may download the application and instructions from the Grants.gov Web site at *http://www07.grants.gov/applicants/apply_for_grants.jsp*. Please carefully read the Notice of HUD's Fiscal Year (FY) 2010 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY 2010 NOFAs for Discretionary Programs, posted on Grants.gov on June 7, 2010. Applicants need to be aware that following receipt, applications go through a validation process in which the application may be accepted or rejected. Please allow time for this process to ensure that you meet the timely receipt requirements.

FOR FURTHER INFORMATION CONTACT: For information concerning the HUD Rural Fund program, contact Robert Duncan, Associate Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone 202–402–4681 (this is not a toll-free number) or 1–877–787–2526 (this is a toll-free number). Questions regarding the 2010 General Section should be directed to the Office of Departmental Grants Management and Oversight at (202) 708–0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD–8929 (toll-free). Persons with speech or hearing impairments may access these numbers via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The NOFA for HUD's FY 2010 Rural Innovation Fund Program, "Rural Fund" has been corrected as follows:

1. On pages 1 and 2, the application deadline date has been corrected to read: "February 23, 2011."

2. On page 5, under the heading "5. *Consortium,*" a phrase in the third full paragraph has been corrected to read: "If the consortium is awarded a Rural Fund grant, within 120 days after the grant award, the consortium members must execute a formal funding agreement."

3. On page 32, section d.(1) has been corrected to read as follows:

(1) Maximum amount established for Category 1 proposals is $20,750,000. For Category 1, Single Purpose and Comprehensive, HUD will select Single Purpose applications that score 75 points or more in rank order until selections totaling $7,500,000 have been reached. If there are an insufficient number of Single Purpose applications to utilize the full $7,500,000 then the remaining amount funds will be available for Category 1 Comprehensive grants. If all $7,500,000 is utilized for the Single Purpose grants, then of the remaining $13,250,000 funds, HUD will evaluate the total number of unfunded Category 1 applications that rated above 75 points, the comparative scores of the unfunded Single Purpose and Comprehensive applications and determine what total amounts will be awarded to the remaining unfunded Single Purpose grants and Comprehensive grants. If the total number of Single Purpose grant applications that rank 75 points or more totals $7,500,000 or less, HUD will allocate all of the remaining balance to Category 2 applications that rank 75 points or higher. HUD, in its sole discretion, may decide not to utilize the full amount of funds available.

Dated: December 29, 2010.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2010–33299 Filed 1–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–16]

Privacy Act of 1974; Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS): Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a New Computer Matching Agreement between HUD and HHS.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of its intent to execute a new computer matching agreement with HHS for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of information provided by participants in any authorized HUD rental housing assistance program with the independent sources of income information available through the National Directory of New Hires (NDNH) maintained by HHS. Specifically, the HUD–HHS computer matching program will now include program participants of HUD's new Disaster Housing Assistance Program (DHAP), in addition to participants of previously authorized HUD rental housing assistance programs and conditions requiring HUD's annual Quality Control for Rental Assistance Subsidy Determinations ("QC") study to provide a statistical measurement of subsidy error within HUD rental housing assistance programs. The most recent renewal of the current matching agreement expires on January 5, 2011.

DATES: HUD will file a report of the subject matching program with the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and Office of Management and Budget's (OMB), Office of Information and Regulatory Affairs. The matching program will become effective as cited in Section V of this notice.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Inquires: Office of the Chief Information Officer, contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8073. For program information: Office of Public and Indian Housing, contact Nicole Faison, Program Advisor for the Real Estate Assessment Center, Department of Housing and Urban Development, 451 Seventh Street, SW., Room PCFL1, Washington, DC 20410, telephone number (202) 475–7963; and for the Office of Housing, contact Catherine M. Brennan, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6160, Washington, DC 20410, telephone number (202) 402–6732. (These are not toll-free numbers.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance Program (DHAP) as a "program" of HUD for the purpose of income verifications and computer matching. Computer matching for participants of the Disaster Housing Assistance Program is expected to begin no sooner than January 2, 2011. As such, pursuant to the Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended, OMB's guidance on this statute entitled "Final Guidance Interpreting the Provisions of Public Law 100–503", and OMB Circular No. A–130, Appendix 1 to OMB's Revisions of Circular No. A–130, "Transmittal Memorandum No. 4, Management of Federal Information Resources," prescribes agencies responsibilities for maintaining records about individuals, HUD is providing the public with notice of a new computer matching agreement with HHS (previous notice of a computer matching program between HUD and HHS was previously published at 73 FR 10046 on February 25, 2008). The first HUD–HHS computer matching program was conducted in September 2005, with HUD's Office of Public and Indian Housing. The scope of the HUD–HHS computer matching program was extended to include HUD's Office of Housing in December 2007. This notice supersedes the previous notice and changes the scope of the existing computer matching program to now include participants of HUD's DHAP.

The matching program will be carried out only to the extent necessary to: (1) Verify the employment and income of individuals participating in programs identified in Section I below, to correctly determine the amount of their rent and assistance, (2) identify, prevent, and recover improper payments made on behalf of tenants, and (3) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals participating in any HUD authorized rental housing assistance program.

HUD will make the results of the computer matching program available to public housing agencies (PHAs), private housing owners and management agents (O/As) administering HUD rental assistance programs to enable them to verify employment and income and correctly determine the rent and assistance levels for individuals participating in those programs, and contract administrators (CAs) overseeing and monitoring O/A operations. This information also may be disclosed to the HUD Inspector General (HUD/IG) and the Attorney General in detecting and investigating potential cases of fraud, waste, and abuse of the above named programs.

In addition to the above noted information disclosures, limited redisclosure of reports containing NDNH information may be redisclosed to the following persons and/or entities: (1) independent auditors for the sole purpose of performing an audit of whether these HUD authorized entities verified tenants' employment and/or income and calculated the subsidy and rent correctly; and (2) entities and/or individuals associated with grievance procedures and judicial proceedings (*i.e.* lawyers, court personnel, agency personnel, grievance hearing officers, etc.) relating to independently verified unreported income identified through this matching program.

HUD and its third party administrators (PHAs, O/As, and CAs) will use this matching authority to identify, reduce or eliminate improper payments in HUD's rental housing assistance programs, while continuing to ensure that HUD rental housing assistance programs serve and are accessible by its intended program beneficiaries.

I. Authority

This matching program is being conducted pursuant to Section 217 of the Consolidated Appropriation Act of 2004 (Pub. L. 108–199, Approved January 23, 2004), which amended Section 453(j) of the Social Security Act (42 U.S.C. 653(j)), Sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); Section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 239 of HUD's 2009 Appropriations, effective March 11, 2009 (42 U.S.C. 3544); Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); Section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental housing assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs. Effective January 31, 2010, all applicants and participants under the age of six, are required to disclose their SSN to HUD, in accordance with regulatory revisions made to 24 CFR 5.216, as published at 74 FR 68924, on December 29, 2009.

Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, approved January 23, 2004) authorizes HUD to provide to HHS information on persons participating in any programs authorized by:

(i) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(ii) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(iii) Section 221(d)(3), 221(d)(5) or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z–1);

(iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(v) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (new HUD regulation at 24 CFR 5.233).

This matching program also assists HUD in complying with the following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204);

2. Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" (June 18, 2010);

3. Office of Management and Budget M–10–13, Issuance of Part III to OMB Circular A–123, appendix C;

4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);

5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);

6. Improper Payments Information Act of 2002 (Pub. L. 107–300); and

7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002 Implementation Guide.

HHS shall then compare this information provided by HUD with data contained in the National Directory of New Hires and report the results of the data match to HUD. The Act gives HUD the authority to disclose this information to CAs, O/As, and PHAs for the purpose of verifying the employment and income of individuals receiving benefits in the above programs. HUD shall not seek, use or disclose information relating to an individual without the prior written consent of that individual, and HUD has the authority to require consent as a condition of participating in HUD rental housing assistance programs.

HHS' disclosure of data from the National Directory of New Hires is authorized by Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The disclosures from the HHS system of records, "Location and Collection System of Records," No. 09–90–0074, will be made pursuant to "Routine Use" (17), identified in the **Federal Register** last published at 72 FR 51446 on September 7, 2007. This routine use authorizes HHS to "disclose to the Department of Housing and Urban Development information in the NDNH portion of this system for purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals."

II. Objectives To Be Met by the Matching Program

HUD's primary objective of the computer matching program is to verify the employment and income of individuals participating in the housing programs identified in Section I above, to determine the appropriate level of rental assistance, and to detect, deter and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to PHAs, and O/As, by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs operating Public Housing programs may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

An additional objective of this computer matching program is to facilitate the statistical measurement of subsidy error by completing an annual QC study. The QC study provides national estimates of the extent, severity, costs, and sources of rent errors

for rental assistance programs, administered by the Offices of Housing and Pubic and Indian Housing. This study is designed to measure the extent of administrative error by housing providers and tenant income reporting errors. The errors evaluated in this study affect the rent contributions tenants should have been charged. HUD will use NDNH information resulting from this data comparison and disclosure solely for the purpose of conducting aggregate analyses of employment and income reporting of individuals participating in the rental housing assistance programs. The study will not contain personally identifiable information of individuals.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated systems of records known as Tenant Rental Assistance Certification System (TRACS) (HUD/H–11), Inventory Management System (HUD/PIH–4, formerly the Public and Indian Housing Information Center (PIC) (HUD/PIH–4), and Enterprise Income Verification (EIV) System (HUD/PIH–5) will be compared to data from the NDNH database. The notices for these systems were published at 65 FR 52777, 67 FR 20986, and 70 FR 41780, which was subsequently amended and published at 72 FR 17589, respectively. The notice for the EIV system was subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235. HUD will disclose to HHS only tenant personal identifiers, i.e., full name, Social Security Number, and date of birth. HHS will match the HUD-provided personal identifiers to personal identifiers included in the National Directory of New Hires (NDNH) contained within their systems of records known as "Location and Collection System of Records," No. 09–90–0074. HHS will provide income data to HUD only for individuals with matching personal identifiers.

A. Income Verification

Any disparity between tenant-reported income and/or sources and the income and sources derived from the match (*i.e.,* a "hit") will be further reviewed by HUD, the program administrator, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior wage information and other data will be sought directly from employers and/or tenants.

B. Administrative or Legal Actions

With respect to the "hits" that will occur as a result of this matching program, HUD requires program administrators to take appropriate action in consultation with tenants to: (1) resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

Program administrators must compute the rent in full compliance with all applicable occupancy regulations. Program administrator must ensure that they use the correct income and correctly compute the rent. The program administrator may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the program administrator of its findings, and tenants are informed of the opportunity to contest such findings and (b) either the expiration of any notice period provided in applicable HUD requirements of the program or the 30-day period beginning on the date on which notice of adverse findings was mailed or otherwise provided to the tenant. In all cases, program administrators will resolve income discrepancies in consultation with tenants. Additionally, serious violations, which program administrators, HUD program staff, or HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

IV. Records To Be Matched

HHS will conduct the matching of tenant SSNs, full names, and dates of births (DOBs) to tenant data HUD supplies from its Tenant Rental Assistance Certification System (TRACS) (HUD/H–11) and Public and Indian Housing Information Center (PIC) system (HUD/PIH–4). Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

HHS will match the tenant records included in HUD/H–11 and HUD/PIH–4 to NDNH records contained in HHS' "Location and Collection System of Records," No. 09–90–0074. HUD will place the resulting matched data into its Enterprise Income Verification (EIV) system (HUD/PIH–5). The notice for this system was published at 72 FR 17589, and subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235. Routine uses of records maintained in the system, including categories of users and purposes of such uses was published in that Notice.

V. Period of the Match

The matching program will become effective and the matching may commence after the respective Data Integrity Boards (DIBs) of both agencies approve and sign the computer matching agreement, and after, the later of the following: (1) 40 days after report of the matching program is sent to Congress and OMB; (2) at least 30 days after publication of this notice in the **Federal Register**, unless comments are received, which would result in a contrary determination. The computer matching program will be conducted according to agreement between HUD and HHS. The computer matching agreement for the planned match will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the effective date. The agreement may be renewed for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within three months of the expiration date, all Data Integrity Boards (DIBs) review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 16, 2010.

Jerry E. Williams,

Chief Information Officer.

[FR Doc. 2010–33298 Filed 1–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N137; BAC–4311–K9–S3]

Elizabeth Hartwell Mason Neck National Wildlife Refuge, Fairfax County, VA, and Featherstone National Wildlife Refuge, Prince William County, VA; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft comprehensive conservation plan and the environmental assessment (CCP/EA) for Elizabeth Hartwell Mason Neck (Mason Neck) National Wildlife Refuge (NWR) and Featherstone NWR for a 45-day public review and comment period. The draft CCP/EA describes three alternatives for managing Mason Neck NWR and two alternatives for managing Featherstone NWR for the next 15 years. Alternative B is identified for both refuges as the Service-preferred alternative. Also available for public review and comment are the draft compatibility determinations, which are included as appendix B in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, please send them by February 22, 2011. We will also hold public meetings. We will announce upcoming public meetings in local news media, via our project mailing list, and on our regional planning Web site, *http://www.fws.gov/northeast/planning/MasonNeck_Featherstone/ccphome.html*

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

Electronic mail: northeastplanning@fws.gov. Please include "Mason Neck and Featherstone NWRs CCP" in the subject line of your e-mail.

U.S. Postal Service: Nancy McGarigal, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Facsimile: Attention: Nancy McGarigal, 413–253–8468.

In-Person Drop-off, Viewing, or Pickup: Call 703–490–4979 to make an appointment during regular business hours at the Potomac River NWR Complex headquarters office, 14344 Jefferson Davis Highway, Woodbridge, VA 22191–2716.

FOR FURTHER INFORMATION CONTACT: Greg Weiler, Refuge Manager, Potomac River NWR Complex, 14344 Jefferson Davis Highway, Woodbridge, VA 22191–2716; phone: 703–490–4979; facsimile: 703–490–5631; electronic mail: *fw5rw_msnnwr@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Mason Neck and Featherstone NWRs. We published our original notice of intent to prepare a CCP in the **Federal Register** on May 18, 2007 (72 FR 28066).

Mason Neck and Featherstone NWRs, together with Occoquan Bay NWR, comprise the Potomac River NWR Complex headquartered in Woodbridge, Virginia. Mason Neck NWR was established in 1969 as the first national wildlife refuge specifically created to protect a federally listed species. The refuge was created under the authority of the Endangered Species Preservation Act of 1966, the precursor to the current-day Endangered Species Act of 1973. The bald eagle (*Haliaeetus leucocephalus*), which was federally listed as threatened in 1969 was, and continues to be, the focal species of concern on the refuge. Due to successful recovery efforts throughout its range, the bald eagle was officially removed from the Federal list in 2007. It continues to be protected, however, under other Federal laws and by the Commonwealth of Virginia. Mason Neck NWR encompasses 2,277 acres of forest, marsh, and riverine habitat along Occoquan Bay and the mainstem of the tidal Potomac River. Refuge visitors engage in wildlife observation and photography, environmental education and interpretation, and fall deer hunting.

Featherstone NWR was established in 1979 with land acquired from the District of Columbia. It was further expanded in 1992 with lands donated by Prince William County. It presently encompasses 325 acres of marsh and forested riverine habitat along the southwest edge of Occoquan Bay. Its wetlands are important habitat for bald eagles, wading birds, waterbirds, and waterfowl, as well as other native species of conservation concern. The refuge is presently closed to public use and access for public safety reasons; there is currently no public parking available or safe access across the railroad tracks, which lie along the length of the refuge's western boundary.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Refuge Administration Act.

Public Outreach

In March 2007, we distributed two issues of a workbook/planning newsletter, one for each refuge, to several hundred people on our project mailing list. We asked the recipients about their interest in the refuges and whether they had issues or concerns they would like us to address. We also posted the newsletters online for people to access electronically. In addition, we notified the general public of our planning kick-off and our interest in hearing about issues and concerns by publishing news releases in several local and regional newspapers. We also held two public scoping meetings in March 2007 in the cities of Woodbridge and Lorton, Virginia. The purpose of those meetings was to share information on the planning process, and to solicit management issues and concerns. Throughout the process, refuge staff have conducted additional outreach via participation in community meetings, events, and other public forums.

Key issues common to both refuges identified by the public and our partners included:

- Developing a biological program with enough depth to address concerns about the biological diversity, health, and integrity of the refuges' forests and wetlands, and with capability to monitor for climate change impacts;
- Improving water quality;
- Protecting both refuges' shorelines;

• Controlling invasive plants and forest pests;
• Controlling an over-abundant deer population;
• Creating trail connections on and off the refuges;
• Increasing opportunities for compatible public uses; and
• Providing more opportunities for hunting.

Issues specific to Mason Neck NWR include management of the great blue heron rookery at Great Marsh and management of refuge impoundments. Issues specific to Featherstone NWR include the lack of safe public access to the refuge and the proposal for a Potomac Heritage National Scenic Trail segment to run through the refuge. We have considered and evaluated all of these comments in the various alternatives addressed in the draft CCP/EA.

CCP Alternatives We Are Considering

We developed three management alternatives for Mason Neck NWR and two alternatives for Featherstone NWR based on their respective establishment purposes, the vision and goals we developed, and the issues and concerns that the public, State, and Federal agencies, and the Service raised during the planning process. A full description of each alternative is in the EA. The alternatives identify several actions in common. On both Mason Neck and Featherstone NWRs, all alternatives include measures to protect wetlands and refuge shorelines, control invasive plant species, protect cultural resources, establish baseline conditions and monitor for climate change impacts, distribute refuge revenue sharing payments, and continue participation in conservation and education partnerships.

There are other actions that differ among the alternatives. The draft CCP/EA describes each alternative in detail and relates them to the issues and concerns that arose during the planning process. Below, we provide summaries for the three Mason Neck NWR alternatives, followed by summaries for the two Featherstone NWR alternatives.

Mason Neck NWR Alternatives

Alternative A (Current Management)

This alternative is the "No Action" alternative required by the National Environmental Policy Act (NEPA). Alternative A defines our current management activities, including those planned, funded, or underway, and serves as the baseline against which to compare Alternatives B and C. Alternative A would maintain our present refuge staffing level and our visitor services facilities, including existing trails and viewing platforms. We would continue to emphasize wildlife observation and photography opportunities, and provide a fall deer hunt. Our biological program priorities would continue to be protecting the refuge's wetlands and upland forest for migratory birds, with particular emphasis on protecting nesting bald eagles and the great blue heron rookery. Controlling invasive plants would also continue to be an important part of our program.

Alternative B (Improved Management for Trust Resources)

This is the Service-preferred alternative. It combines the actions we believe would best achieve the refuge's purposes, vision and goals, and the NWRS policy on Biological Integrity, Diversity, and Environmental Health (601 FW 3). This alternative would also be best in responding to the issues that arose during the planning process.

Alternative B would improve our management of refuge habitats to support Federal trust resources and species of conservation concern. In particular, our priority would be to enhance our management of the refuge's upland forests to benefit bald eagles, great blue heron, and other forest-dependent migratory birds through measures such as prescribed fire, forest thinning, and planting of trees, to improve forest health. We would also pursue actions to improve habitat quality in the refuge's marsh habitat to benefit bald eagles, waterfowl, waterbirds, and interjurisdictional fish. These actions include working with partners to improve water quality and clean up debris in Great Marsh, upgrading the water-control structure and altering the water-level regime in Little Marsh to promote better foraging opportunities, and improving fish passage.

Both the improvement of our current trails and addition of new trails and observation platforms would offer increased opportunities for wildlife observation, photography, and interpretation. We would also expand our interpretive programs and outreach efforts to inform and involve more people in working towards refuge goals.

Alternative C (Enhanced Public Use Management)

Alternative C would manage habitat similar to Alternative A, but would expand wildlife-dependent public use programs beyond that which is proposed under either Alternatives A or B. We would devote more staff time and resources to offering new or improved compatible priority public programs. For example, we would offer a new muzzleloader deer hunting season, construct additional photography blinds, and offer more guided and self-guided wildlife observation tours and environmental education programs.

Featherstone NWR Alternatives

Alternative A (Current Management)

Similar to Alternative A for Mason Neck NWR, this alternative satisfies the NEPA requirement for a "No Action" alternative. It describes our current management priorities and activities, and serves as a baseline for comparing and contrasting Alternative B. Under Alternative A, Featherstone NWR would continue to be closed to all public use and access. Our priorities would be to protect the refuge from vandalism and trespassing, control invasive plants, and monitor for threats to wildlife and habitats.

Alternative B (Enhanced Management)

This is the Service-preferred alternative. Habitat and species management would focus on protecting sensitive nesting areas from human disturbance, and monitoring for and treating invasive plants, pests, and pathogens to avoid catastrophic loss or degradation of habitat. Under Alternative B, we would also continue to work with Prince William County to secure public parking and legal and safe pedestrian access to the refuge, which has been an issue since refuge establishment. Once that access is secured and we have the additional staff to manage those activities, we would provide opportunities for wildlife observation and nature photography on designated trails, and fishing at designated sites.

Under Alternative B, within 5 years, we would evaluate a proposal to provide opportunities for hunting. Other alternatives, including no action, would be considered in that hunt program evaluation, and there would be public involvement before making a final decision on the types of hunting opportunities offered.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents from the agency Web site, *http://www.fws.gov/northeast/planning/MasonNeck_Featherstone/ccphome.html.*

Next Steps

After this comment period ends, we will analyze the comments and address

them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 29, 2010.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2010–33340 Filed 1–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000. XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on February 3, 2011, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. until 4:30 p.m. Agenda items include: BLM State Director's update on statewide programs and issues; presentation on water; updates on the Renewable Energy Strategy, Restoration Design Energy Project Programmatic Environmental Impact Statement (EIS), and Northern Arizona Proposed Mineral Withdrawal Draft EIS; RAC questions on BLM District Managers' Reports; and reports by the RAC working groups. A public comment period will be provided at 11:30 a.m. on February 3, 2011, for any interested members of the public who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The RRAC will not review any recreation fee proposals at this meeting.

DATES: *Effective Date:* February 3, 2011.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

Dated: December 28, 2010.

James G. Kenna,

Arizona State Director.

[FR Doc. 2010–33339 Filed 1–4–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Program Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the Adaptive Management Work Group (AMWG), a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

DATES: The AMWG will conduct the meeting on Wednesday and Thursday, February 9–10, 2011. The meeting will begin at 9:30 a.m. and end at 5 p.m. the first day and will begin at 8 a.m. and conclude at approximately 3 p.m. on the second day.

ADDRESSES: The meeting will be held at the Fiesta Resort Conference Center, Encantada Ballroom, 2100 S. Priest Drive, Tempe, Arizona.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; e-mail at *gknowles@usbr.gov*.

SUPPLEMENTARY INFORMATION

Agenda: The primary purpose of the meeting will be for the AMWG to discuss the High Flow Experiment Synthesis reports, status of sediment inputs, and concerns about the Fiscal Year 2011 workplan in light of reduced agency budgets. Other issues to be addressed will be: (1) Final report of Fiscal Year 2010 expenditures, (2) updates on High Flow Experimental Protocol and the Non-native Fish Control environmental assessments, (3) Colorado River Basin hydrology, (4) and the Long-Term Experimental and Management Plan. In addition, there will be updates from the Charter Ad Hoc Group and a follow up report on the work done by the Desired Future Conditions Ad Hoc Group. The AMWG will also address other administrative and resource issues pertaining to the AMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/11feb09/index.html.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3781; facsimile 801–524–3858; e-mail at *gknowles@usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 15, 2010.

Glen Knowles,

Chief, Adaptive Management Work Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2010–33338 Filed 1–4–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–754]

In the Matter of Certain Handbags, Luggage, Accessories and Packaging Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 3, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Louis Vuitton Malletier S.A. of France and Louis Vuitton U.S. Manufacturing, Inc. of San Dimas, California. An amended complaint was filed on December 10, 2010. On December 16, 2010, complainants filed supplemental materials. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handbags. luggage, accessories and packaging thereof by reason of infringement of U.S. Trademark Registration No. 297,594 ("the '594 trademark"); U.S. Trademark Registration No. 1,643,625 ("the '625 trademark"); U.S. Trademark Registration No. 1,653,663 ("the '663 trademark"); U.S. Trademark Registration No. 1,875,198 ("the '198 trademark"); U.S. Trademark Registration No. 2,773,107 ("the '107 trademark"); U.S. Trademark Registration No. 2,177,828 ("the '828 trademark"); U.S. Trademark Registration No. 2,181,753 ("the '753 trademark"); and U.S. Trademark Registration No. 1,519,828 ("the '828 trademark"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Erin D. E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 28, 2010, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain handbags, luggage, accessories and packaging thereof that infringe the '594 trademark; the '625 trademark; the '663 trademark; the '198 trademark; the '107 trademark; the '828 trademark; the '753 trademark; and the '828 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Louis Vuitton Malletier S.A., 2 Rue du Pont Neuf, Paris, France 75034.

Louis Vuitton U.S. Manufacturing, Inc., 321 W. Covina Boulevard, San Dimas, CA 91773–2907.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

T&T Handbag Industrial Co., Ltd., Room 4202, Tower B, KingGu Building, HeGuang Road, TianHe District, Guangzhou, China.

Sanjiu Leather Co., Ltd. of Guangzhou, 9 Longgui Section (Nancun #4 Economic Community), National Road 106, Baiyun District, Guangzhou, China.

Meada Corporation (d/b/a Diophy International), 9319A Telstar Avenue, El Monte, CA 91731–2815.

Pacpro, Inc., 9319A Telstar Avenue, El Monte, CA 91731–2815.

Jianyong Zheng (a/k/a Jiu Gao Zheng, Jiu An Zheng, Jian Yong Zheng, Peter Zheng), 886 S. Golden West Avenue, Arcadia, CA 91007–6563.

Alice Bei Wang (a/k/a Alice B. Wang), 886 S. Golden West Avenue, Arcadia, CA 91007–6563.

Trendy Creations, Inc., 9851 Mason Avenue, Chatsworth, CA 91311.

The Inspired Bagger, 8444 Endicott Lane, Dallas, TX 75227.

House of Bags, 1125–8 Maple Alley, Los Angeles, CA 90015.

Ronett Trading, Inc. (d/b/a Ronett Wholesale & Import), 43 West 27th Street, New York, NY 10001.

EZ Shine Group, Inc., 48 West 27th Street, New York, NY 10001.

Master of Handbags, 1153 Santee Street, Los Angeles, CA 90015.

Choicehandbag.com, Inc. (d/b/a Choice Handbags), 1100 S. Main Street, Los Angeles, CA 90015.

Rasul Enterprises, LLC (d/b/a The Handbag Warehouse), 11536 Harry Hines Blvd. Suite #205, Dallas, TX 75229.

(c) The Commission investigative attorney, party to this investigation, is Erin D. E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 29, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–33249 Filed 1–4–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Notice is hereby given that on December 22, 2010 a proposed consent decree ("proposed Decree") in *United States* v. *Alcoa, Inc., et al.,* C.A. No. 3:10-cv-532, was lodged with the United States District Court for the Northern District of Indiana.

In this action under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606(a) & 9607(a) ("CERCLA"), the United States and the State of Indiana seek to enjoin the Defendants to perform a remedial action to address an imminent and substantial endangerment to the public health, public welfare and the environment caused by actual or threatened releases of hazardous substances from the Cam-Or National Priorities List Site ("the Cam-Or Site") located in Westville, LaPorte County, Indiana, and to recover response costs that the United States and Indiana have incurred and will incur in the future at the Cam-Or Site. The proposed Decree requires the Settling Work Parties (Alcoa, Inc., ANR Pipeline Company, C. Stoddard & Sons, Inc., Clean Harbors Environmental Services, Inc., Consolidated Rail Corporation, CSX Transportation, Inc., Ford Motor Company, Imperial Oil Limited, Ingersoll-Rand Company, Northern Indiana Public Service Company, Rockwell Automation, Tennessee Gas Pipeline Company, and United States Steel Corporation) to construct and operate a soil containment system, to design, install, operate and maintain a groundwater pump and treat system, to design, install, operate, and maintain a light non-aqueous phase liquid remediation system, to install and operate a monitoring system for the remedial action, and to develop and implement a plan for institutional controls at the Site.

Additionally, under the Consent Decree the Settling Work Parties have agreed to pre-pay $2.2 million into a Site special account to be used for future oversight costs of the United States Environmental Protection Agency ("U.S. EPA"), and if and when such fund, plus interest, is depleted, to pay 50% of any additional U.S. EPA oversight costs. Further, under the Decree the Settling Work Parties have agreed to pay all of U.S. EPA's other future response costs; to pay all of the Indiana Department of Environmental Management's future oversight costs and other future response costs; and to pay $200,000 toward approximately $3.4 million in pre-entry unreimbursed response costs incurred by the United States. The Decree would provide covenants not to sue to the Settling Work Parties and, if they choose to sign the Consent Decree, to numerous other potentially responsible parties who have previously settled with one or more of the Settling Work Parties (listed in Appendix E to the Decree) and who received indemnification from such parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa, Inc., et al.,* D.J. Ref. 90–11–3–609/1.

The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, South Bend Division, 204 South Main Street, South Bend, Indiana 46601–2122, or the United States Environmental Protection Agency (Region 5) Records Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–33327 Filed 1–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 19, 2010, and published in the **Federal Register** on October 26, 2010, 75 FR 65658, Noramco, Inc., Division of Ortho-McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, raw (9600)	II
Concentrate of Poppy Straw (9670).	II
Tapentadol (9780)	II

The company plans to import the Raw Opium (9600) and Concentrate of Poppy Straw (9670) to manufacture other controlled substances. The company plans to import Tapentadol (9780) in intermediate form for the bulk manufacture of Tapentadol (9780) which it will distribute to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Noramco Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the

company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: December 23, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–33270 Filed 1–4–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 2, 2010, and published in the **Federal Register** on September 1, 2010, (75 FR 53721), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Raw Opium (9600)	II
Opium extracts (9610)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Poppy Straw (9650)	II
Oxymorphone (9652)	II
Concentrate of Poppy Straw (9670).	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 23, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–33265 Filed 1–4–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for Extension With Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about High Growth and Community-Based Job Training Grants OMB No. 1205–0465, which expires: 5/31/2011.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 7, 2011.

ADDRESSES: Submit written comments to Megan Baird, Room N–4643, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3949 (this is not a toll-free number). Fax: 202–693–3890. E-mail: *businessrelations@dol.gov.* Please reference OMB Control Number 1205–0465 in the subject line of the e-mail.

SUPPLEMENTARY INFORMATION:

I. Background: This document provides the justification for the request by the Department of Labor, Employment and Training Administration (ETA) for an extension with revisions of OMB-approved quarterly progress reporting requirements for the High Growth Job Training Initiative (HGJTI) grants and the Community-Based Job Training (CBJT) grants. The OMB-approved HGJTI and CBJTG quarterly progress reporting requirements, OMB No. 1205–1465, expire May 31, 2011. Through the extension with renewal request, ETA will require grantees to submit standardized quarterly progress reports summarizing the number and types of participants served by grantees, the number of exiters, the number of participants engaged in training activities, and some participant outcomes. To calculate the common performance measures for each grantee and the grant programs as a whole, ETA will also require grantees to submit quarterly standardized records for exiters that contain the minimum number of elements needed to calculate common performance measure outcomes. These progress reporting requirements align with outcome categories identified in the SGAs used to award HGJTI and CBJT grants. The collection of this data helps ETA report the impact of these funds and provides ETA with more comprehensive information on the status of individual grants and individuals that receive services and find employment through these grants. The accuracy, reliability, and comparability of program reports submitted by grantees using federal funds are fundamental elements of good public administration and are necessary tools for maintaining and demonstrating system integrity. The use of a standard set of data elements, definitions, and specifications at all levels of the workforce system, including the HGJTI and CBJT grants, helps improve the quality of performance information that is received by ETA. This data also helps ETA provide more targeted technical assistance to support improvement of grantee outcomes. ETA will continue to provide HGJTI and CBJT grantees with a reporting system, the Enterprise

Business Support System (EBSS), which will support the submission of quarterly progress reports to ETA, which include both a performance report (ETA–9134 Form) and narrative report.

II. Review Focus:

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension with revisions.

Title: High Growth and Community-Based Job Training Grants.

OMB Number: 1205–0465.

Affected Public: High Growth Job Training Initiative and Community-Based Job Training grantees.

Form(s): ETA–9134.

Total Annual Respondents: 190.

Annual Frequency: Quarterly.

Total Annual Responses: 760.

Average Time per Response: 112.

Estimated Total Annual Burden Hours: 27,980.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed: at Washington, DC this 28th day of December 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–33266 Filed 1–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Workforce Information Grants to States Application Instructions for PY 2011, Extension Without Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Workforce Information (WI) Grants to States, OMB Control Number 1205–0417 that expires on May 31, 2011.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 7, 2011.

ADDRESSES: Submit written comments to Mr. Anthony Dais, Room S–4231, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2784 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *dais.anthony@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: In May 2008, the Employment and Training Administration (ETA) received three-year approval from the Office of Management and Budget (OMB) to publish without change the annual planning guidance for the Workforce Information Grants to States under OMB Control Number 1205–0417. This approval will expire on May 31, 2011.

On July 16, 2010, ETA published the application instructions for program year (PY) 2010 Workforce Information Grants to States (One-Stop Workforce Information Grant Plan and Annual Performance Report) through Training and Employment Guidance Letter (TEGL) 3–10. ETA is requesting to continue the information collection requirements specified in TEGL 3–10 and be granted OMB approval for three years following the current date of expiration. This **Federal Register** notice is to request public comments and recommendations regarding the continuation of the information collection.

The purpose of the information collection required by TEGL 3–10 is to strengthen and support state and regional use of workforce and economic information, increase data integration, expand the use of economic analysis, information disseminated via the Internet and other means to inform workforce investment decision-making. At the same time, ETA intends to retain a high level of state flexibility, and maintain the current state reporting burden. It is ETA's goal for the Workforce Information Grants to States to support increased employment and sustainable economic growth and recovery by supporting state and local workforce system transformational efforts. Therefore, ETA expects states through their labor market information (LMI)/WI research entities to provide: Reliable foundational data; actionable workforce information; and economic research and information services to state and local policy makers, workforce system staff, job seekers, and external partners. These workforce information services will support the development of data-driven policy, inform training and employment program design and investment decision-making, support consultations with strategic partners, and leverage limited WI program grant resources.

The data/information collection required from each grantee includes:

(a) Submission of an annual grant statement of work (SOW) certification affirming the planned accomplishment of expected grant deliverables signed by both the Administrator of the State Workforce Agency (SWA) and the Chair of the State Workforce Investment Board (SWIB), or by the Governor.

(b) Submission of published economic analyses, special workforce information reports, and/or economic studies determined to be relevant and of benefit to the Governor and state and local workforce investment boards (WIBs).

(c) Submission of an annual performance report that is signed by both the Administrator of the SWA and Chair of the SWIB, or by the Governor.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: Workforce Information Grant to States (One-Stop Workforce Information Grant Plan and Annual Performance Report).

OMB Number: 1205–0417.

Affected Public: State.

Form(s): N/A.

Total Annual Respondents: 54.

Annual Frequency: Once.

Total Annual Responses: 162.

Average Time per Response: Grant Prep and Certification—63 hrs; Relevant Economic Analyses—434 hrs; Annual Report—80 hrs;

Estimated Total Annual Burden Hours: 31,158.

Total Annual Burden Cost for Respondents: $1,246,320.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 28, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–33247 Filed 1–4–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Mine Accident, Injury, Illness, Mine Employment, and Coal Production Reports [OMB Control No. 1219–0007]

AGENCY: Mine Safety and Health Administration.

ACTION: Notice of request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection for notification, investigation, and reporting of accidents, injuries, illnesses, and fatalities at mines; mine employment; and coal production.

DATES: All comments must be received by midnight Eastern Standard Time on March 7, 2011.

ADDRESSES: Comments must clearly be identified with the rule title and may be submitted to MSHA by any of the following methods:

(1) *Electronic mail: zzMSHA-Comments@dol.gov.*

(2) *Facsimile:* 202–693–9441.

(3) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

(4) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Mario Distasio, Chief of the Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *distasio.mario@dol.gov* (e-mail), 202–693–9445 (voicemail), 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The reporting and recordkeeping provisions in 30 CFR part 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and independent contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the cause of the accident.

Section 50.11 requires that the mine operator or independent contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20 requires mine operators and independent contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

Section 50.30 requires mine operators and independent contractors working on mine property to report quarterly employment, hours worked, and coal production to MSHA on Form 7000–2.

MSHA tabulates and analyzes the information from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report, along with data from MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report, to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data, when correlated with employment and production data, provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done

effectively using historical data. The information collected under 30 CFR part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, requires that each accident be investigated by the mine operator to determine the cause and means of preventing a recurrence. Records of accidents and investigations must be kept and made available to the Secretary or her authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) requires mine operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence that would assist in the investigation into the cause of the accident.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the information collection request can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by selecting "Rules & Regs", and then selecting "FedReg.Docs". On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register** notice.

III. Current Actions

This notice contains the request for an extension of the existing collection of information in the following:

- 30 CFR 50.10 Immediate Notification;
- 30 CFR 50.11 Investigation;
- 30 CFR 50.20 Preparation and submission of MSHA Report Form 7000–1—Mine Accident, Injury, and Illness Report; and
- 30 CFR 50.30, Preparation and submission of MSHA Form 7000–2—Quarterly Employment and Coal Production Report.

MSHA publishes its data tabulations and analyses in quarterly news releases and other reports, in five Informational Reports, and in an Annual Report to Congress. MSHA publishes the expiration dates for OMB approval on all forms. There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0007.

Frequency: As needed for Form 7000–1; Quarterly for Form 7000–2.

Affected Public: Business or other for-profit.

Cost to Federal Government: $704,731.

Total Burden Respondents: 27,193 (14,631 mine operators + 12,562 independent contractors).

Total Number of Responses: 144,450.

Total Burden Hours: 210,976 hours.

Total Hour Burden Cost: $15,336,514.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 29, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2010–33260 Filed 1–4–11; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–3 CRB Phonorecords II]

Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding [1] to determine the reasonable rates and terms for making and distributing phonorecords. The Copyright Royalty Judges also are announcing the date by which a party who wishes to participate in the rate proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: February 4, 2011.

ADDRESSES: An original, five copies and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Petition, along with the $150 filing fee, must be brought between 8:30 a.m. and 5 p.m. to the Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 804(b)(4) of the Copyright Act, title 17 of the United States Code, allows a party to file with the Copyright Royalty Judges a petition to adjust or determine reasonable rates and terms for the making and distribution of phonorecords, including digital phonorecord deliveries, under 17 U.S.C. 115, every five years, starting in the year 2006. A proceeding was commenced in 2006, 71 FR 1454 (January 9, 2006); on

[1] The prior proceeding was captioned as "DPRA" (which stands for "Digital Phonorecord Rate Adjustment"). Hereinafter, this and future proceedings will be captioned as "Phonorecords" followed by the appropriate Roman numeral.

January 26, 2009, the Judges announced the royalty rates and terms for the section 115 compulsory license. 74 FR 4510 (January 26, 2009). Thus, in accordance with section 804(b)(4), a party may file a petition in 2011. However, no petition has been filed; consequently, section 803(b)(1)(A)(i)(V) requires the Judges to publish in the **Federal Register** by no later than January 5, 2011, a notice commencing this proceeding. Today's notice fulfills this requirement.

Petitions to Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by the $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the "Copyright Royalty Board." If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents herself or himself.

Dated: December 22, 2010.

William J. Roberts, Jr.,

U.S. Copyright Royalty Judge.

[FR Doc. 2010–32634 Filed 1–4–11; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–1 CRB PSS/Satellite II]

Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding [1] to determine the reasonable rates and terms for preexisting subscription and satellite digital audio radio services for the digital performance of sound recordings and the making of ephemeral recordings for the period beginning January 1, 2013, and ending December 31, 2017. The Copyright Royalty Judges also are announcing the date by which a party who wishes to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2011.

ADDRESSES: An original, five copies and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, must be brought between 8:30 a.m. and 5 p.m. to the Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2007, and January 28, 2008, the Copyright Royalty Judges announced the rates and terms through December 31, 2012, for the digital transmission of sound recordings and the making of ephemeral recordings in furtherance of making such transmissions by preexisting subscription services and preexisting satellite digital audio radio services, respectively. 72 FR 71795 (December 19, 2007), 73 FR 4080 (January 24, 2008). Section 804(b)(3)(B) of the Copyright Act, title 17 of the United States Code, requires that "[s]uch proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective January 1, 2011." 17 U.S.C. 804(b)(3)(B). Pursuant to this provision, this notice commences the rate determination proceeding for the license period 2013–2017. Section 803(b)(1)(A)(i)(III) of the Copyright Act requires the Judges to publish a **Federal Register** notice no later than January 5, 2011, commencing this proceeding. Today's notice fulfills this requirement.

Petitions To Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by the $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the "Copyright Royalty Board." If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents herself or himself.

Dated: December 22, 2010.

William J. Roberts, Jr.,

U.S. Copyright Royalty Judge.

[FR Doc. 2010–32635 Filed 1–4–11; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–2 CRB NCEB II]

Determination of Reasonable Rates and Terms for Noncommercial Broadcasting

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of

[1] The prior proceeding was captioned as "DSTRA" (which stands for "Digital Subscription Transmissions Rate Adjustment"). Hereinafter, this and future proceedings will be captioned as "PSS/Satellite" (to reflect both preexisting subscription services ("PSS") and satellite digital audio radio services ("Satellite")) followed by the appropriate Roman numeral.

the proceeding [1] to determine the reasonable rates and terms for use of certain works in connection with noncommercial broadcasting. The Copyright Royalty Judges also are announcing the date by which a party who wishes to participate in the rate proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2011.

ADDRESSES: An original, five copies and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Petition, along with the $150 filing fee, must be brought between 8:30 a.m. and 5 p.m. to the Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 804(b)(6) of the Copyright Act, title 17 of the United States Code, allows a party to file with the Copyright Royalty Judges a petition to initiate a proceeding to determine reasonable rates and terms for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting under 17 U.S.C. 118 every five years, starting in the year 2006. A proceeding was commenced in 2006, 71 FR 1453 (January 9, 2006); on November 30, 2007, the Judges announced the royalty rates and terms for the section 118 compulsory license for the period January 1, 2008, through December 31, 2012. 72 FR 67646 (November 30, 2007). Thus, in accordance with section 804(b)(6), a party may file a petition in 2011. However, no petition has been filed; consequently, section 803(b)(1)(A)(i)(V) requires the Judges to publish in the **Federal Register** by no later than January 5, 2011, a notice commencing the proceeding for the license period 2013–2017. Today's notice fulfills this requirement.

Petitions To Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by the $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the "Copyright Royalty Board." If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents herself or himself.

Dated: December 22, 2010.

William J. Roberts, Jr.,

U.S. Copyright Royalty Judge.

[FR Doc. 2010–32636 Filed 1–4–11; 8:45 am]

BILLING CODE 1410–72–P

[1] The prior proceeding was captioned as "NCBRA" (which stands for "Noncommercial Broadcasting Rate Adjustment"). Hereinafter, this and future proceedings will be captioned as "NCEB" (which stands for "Noncommercial Educational Broadcasting") followed by the appropriate Roman numeral.

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2011–55; Order No. 633]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add an additional Global Reseller Expedited Package contract to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are Due:* January 10, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On December 28, 2010, the Postal Service filed a notice announcing that it intends to enter into an additional Global Reseller Expedited Package (GREP) contract.[1] The Postal Service noted that:

> Although both parties have yet to sign the agreement filed in this docket, the course of negotiations and the timing of this filing in relation to other filings have led the Postal Service to submit the agreement in its present state. The agreement is expected to be executed soon. The Postal Service will supplement this filing once the agreement is executed, and will advise of any substantive changes to the text.

Notice at 1 n.2. The Postal Service filed the executed contract on December 29, 2010.[2] The Postal Service believes that the instant contract is functionally equivalent to the previously submitted GREP contract, and is supported by Governors' Decision No. 10–1, attached to the Notice and originally filed in Docket No. CP2010–36. *Id.* at 1, Attachment 3. The Notice explains that Order No. 445, which established GREP Contracts 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1–2. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–36 serve as the baseline contract for future functional equivalence analyses of the GREP Contracts 1 product.

The instant contract. The Postal Service filed a draft contract in this case

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, December 28, 2010 (Notice).

[2] Notice of the United States Postal Service of Filing a Signed Global Reseller Expedited Package Negotiated Service Agreement, December 29, 2010 (Signed Contract Notice).

pursuant to 39 CFR 3015.5 with its Notice. The Postal Service then filed the fully executed contract one day later. The Postal Service contends that the contract is in accordance with Order No. 445. The term of the contract is currently set at 5 calendar years from the date the Postal Service notifies the customer that it is willing to accept mail under the contract terms and all necessary regulatory approvals have been received. Signed Contract Notice, Attachment 1 at 8. The contract start date may be no earlier than February 17, 2011. The contract may also be terminated by either party on not less than 30 days' written notice. *Id.*

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the draft contract and an applicable annex; [3]
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 10–1 which establishes prices and classifications for GREP contracts, a description of applicable GREP contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the GREP contract fits within the Mail Classification Schedule language for GREP Contracts 1. The Postal Service identifies customer-specific information and general contract terms that distinguish the contract from the baseline GREP agreement. It states that the contract differs from the contract in Docket No. CP2010–36 pertaining to customer-specific information, *e.g.,* customer's name, address, representative, signatory, term, provisions for mail tender options, applicable discounts, notice of postage changes, minimum revenue, as well as several other conditions. *Id.* at 4–6. The Postal Service states that the differences, which include price variations based on updated costing information, do not alter the contract's functional equivalency. *Id.* at 3–4. The Postal Service asserts that "[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GREP contract are similar, if not the same, as the relevant characteristics of the contract filed in Docket No. CP2010–36." *Id.* at 4.

[3] The fully executed contract was filed as Attachment 1 to the Signed Contract Notice.

The Postal Service concludes that its filings demonstrate that the new GREP contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GREP contract. It states that the differences do not affect the services being offered or the fundamental structure of the contract. Therefore, it requests that the instant contract be included within the GREP Contracts 1 product. *Id.* at 6.

II. Notice of Filing

The Commission establishes Docket No. CP2011–55 for consideration of matters related to the Postal Service's Notice and Signed Contract Notice.

Interested persons may submit comments on whether the Postal Service's filings are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 no later than January 10, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the above-captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2011–55 for consideration of matters raised by the Postal Service's Notice and Signed Contract Notice.

2. Comments by interested persons in this proceeding are due no later than January 10, 2011.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–33315 Filed 1–4–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–54; Order No. 631]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 3 contract to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are Due:* January 10, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Notice of Filing
III. Ordering Paragraphs

I. Background

On December 28, 2010, the Postal Service filed a notice announcing that it intends to enter into an additional Global Expedited Package Services 3 (GEPS 3) contract.[1] In its initial filing, the Postal Service included a draft of the contract, noting that a final agreement would be executed soon. *Id.* at 1 n.2. On December 29, 2010, the Postal Service submitted a redacted signed copy of the contract, replacing the draft version originally filed in the Notice.[2] The Postal Service also submitted a nonpublic version of the signed agreement separately under seal, also substituting the version originally filed. Revised Notice at 1–2.

GEPS contracts provide incentives for businesses that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. Notice at 4. The Postal Service asserts that the instant contract is supported by Governors' Decision No. 08–7, which is attached to the Notice and was originally filed in Docket No. CP2008–4.[3]

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed under Seal, December 28, 2010; Notice of the United States Postal Service of Errata to Notice of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal (together, Notice).

[2] Notice of the United States Postal Service of Filing a Signed Global Expedited Package Services 3 Negotiated Service Agreement, December 29, 2010, at 1 (Revised Notice).

[3] Notice at 1, Attachment 3; *see* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts,

Continued

The Postal Service believes that the instant agreement should be included within the GEPS 3 product because it is functionally equivalent to the contract filed in Docket No. CP2010–71.[4] The Postal Service explains that, in Docket No. CP2010–71, the Commission added GEPS 3 to the competitive product list and established the contract filed as the GEPS 3 baseline agreement for comparing other functionally equivalent contracts. Notice at 1–2 (citing Order No. 503 at 7). It states that other GEPS contracts may be included within the GEPS 3 product if they are functionally equivalent to the GEPS 3 baseline agreement and meet the requirements of 39 U.S.C. 3633. *Id.* at 2.

The instant contract. The Postal Service filed the instant contract in accordance with 39 CFR 3015.5. The term of the instant agreement is 5 years from the effective date unless either party terminates the agreement sooner. *Id.* at 3; Revised Notice, Attachment 1 at 7. The Postal Service will notify the other party of the effective date within 30 days after receiving all necessary regulatory approvals. Revised Notice, Attachment 1 at 7. The effective date will be no earlier than February 17, 2011. *Id.*

To support the Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and an applicable annex; [5]
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 (with attachments) establishing prices and classifications for GEPS contracts and a certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contract, related financial information, and customer-identifying information under seal.

The Postal Service contends that the instant agreement fits within the Mail Classification Schedule (MCS) language for GEPS contracts included in Governors' Decision No. 08–7, but understands that the Commission considers the language illustrative until the MCS is completed. Notice at 3 (citing Order No. 86 at 6).

The Notice advances reasons why the instant GEPS 3 contract is functionally equivalent to the GEPS 3 baseline agreement in Docket No. CP2010–71. *Id.* at 3. The Postal Service believes that the instant contract shares similar cost and market characteristics with both the baseline agreement and previous GEPS contracts. *Id.* at 3–4. It also asserts that the instant contract fits within the parameters outlined by Governors' Decision No. 08–7 establishing the rates for GEPS agreements. *Id.* at 4.

The Postal Service identifies several differences between the instant contract and the GEPS 3 baseline agreement, including customer-specific information, payment method, minimum revenue commitment, and term. *Id.* at 4–6. Despite these differences, the Postal Service asserts that the instant contract is "functionally equivalent in all pertinent respects" to the GEPS 3 baseline agreement.[6]

The Postal Service concludes that its filing demonstrates that the instant GEPS 3 contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the GEPS 3 baseline agreement. Notice at 6. Therefore, it requests that the Commission add the instant contract to the GEPS 3 product grouping. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2011–54 to consider matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 39 CFR part 3015. Comments are due no later than January 10, 2011. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2011–54 to consider matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than January 10, 2011.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–33317 Filed 1–4–11; 8:45 am]

BILLING CODE 7710–FW–P

Docket No. CP2008–4, issued May 6, 2008 (Governors' Decision No. 08–7).

[4] Docket Nos. MC2010–28 and CP2010–71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503).

[5] The Postal Service filed a redacted copy of the signed agreement as Attachment 1 to the Revised Notice.

[6] Revised Notice at 6 (citing Docket Nos. CP2008–8, CP2008–9, and CP2008–10, Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008, at 8).

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 4 p.m., Monday, January 10, 2011; and 9 a.m., Tuesday, January 11, 2011.

PLACE: Long Beach, California, at the Renaissance Hotel, 111 East Ocean Boulevard.

STATUS: (Closed).

MATTERS TO BE CONSIDERED:

Monday, January 10, at 4 p.m. (Closed)

1. Financial Matters.
2. Pricing.
3. Strategic Issues.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, January 11, at 9 a.m. (Closed)

1. Continuation of Monday's agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2010–33358 Filed 1–3–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 301 and Forms ATS and ATS–R; SEC File No. 270–451; OMB Control No. 3235–0509.

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") has submitted to the

Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation ATS provides a regulatory structure for alternative trading systems. Regulation ATS allows an alternative trading system to choose between registering as a broker-dealer and complying with Regulation ATS, or registering as a national securities exchange. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that apply only to alternative trading systems with significant volume. Rule 301 describes the conditions with which an alternative trading system must comply to be registered as a broker-dealer. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

An alternative trading system with significant volume is required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading system is also required to establish standards for granting access to trading on its system. In addition, upon a decision to deny or limit an investor's access to the system, an alternative trading system is required to provide notice to a user of the denial or limitation and its right to an appeal to the Commission. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the systems' capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Rule to monitor the growth and development of alternative trading systems, and to monitor whether the systems promote fair and orderly securities markets and operate in a manner that is consistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that would allow it to determine whether such systems have adequate safeguards.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 80 respondents.

An estimated 80 respondents will file an average total of 552 responses per year, which corresponds to an estimated aggregated annual response burden of 1,792.5 hours (comprised of 1,356 hours professional labor and 436.5 hours para-professional labor). At an average cost per burden hour of approximately $316 for professional labor and $59 for para-professional labor, with an additional 35% of labor costs added to account for overhead costs such as printing, copying, and postage, the resultant total related cost of compliance for these respondents is $613,236.82 per year ((1,356 professional burden hours multiplied by $316) plus (436.5 para-professional burden hours multiplied by $59) equals $454,249.50; plus 35% for overhead costs ($158,987.32) equals $613,236.82; figures may vary slightly due to arithmetic rounding).

An estimated 5 respondents will commence operations as an ATS each year, necessitating the filing of an initial operation report on Form ATS. The Commission estimates that the average compliance burden for each respondent would be 20 hours, comprising 13 hours of in-house professional work and 7 hours of clerical work. Thus, the total compliance burden per year is 100 hours (5 responses × 20 hours = 100 hours). The total cost of compliance for the annual burden is $22,605 ($316 × 13 hours per response + $59 × 7 hours per response = $4,521 per response; $4,521 × 5 responses = $22,605). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $1,582.35 per respondent ($4,521 times 35%). Thus, the Commission estimates the total annualized cost burden would be $7,911.75 ($1,582.35 × 5 respondents).

An estimated 80 respondents will file an estimated two periodic amendments to their initial operation report on Form ATS each year, an estimated total of 160 responses. The Commission estimates that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 320 hours (160 responses × 2 hours = 320 hours). The total cost of compliance for the annual burden is $1,007 ($316 × 1.5 hours per response + $59 × 0.5 hours per response = $503.50 per response; $503.50 × 160 responses = $80,560). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $176.23 per response ($503.50 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be $352.46 ($176.23 × 2 responses per respondent) and the total annualized cost burden for all respondents would be $28,196.80 ($176.23 × 80 respondents × 2 responses per respondent).

An estimated 80 respondents will file four quarterly reports on Form ATS–R each year for an estimated total of 320 responses. The Commission estimates that that the average compliance burden for each response would be 4 hours, comprising 3 hours of in-house professional work and 1 hour of clerical work. Thus, the total compliance burden per year is 1,280 hours (320 responses × 4 hours = 1,280 hours). The total cost of compliance for the annual burden is $322,240 ($316 × 3 hours per response + $59 × 1 hours per response = $1,007 per response; $1,007 × 320 responses = $322,240). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $352.45 per response ($1,007 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be $1,409.80 ($352.45 × 4 responses per respondent) and the total annualized cost burden for all respondents would be $112,784 ($352.45 × 80 respondents × 4 responses per respondent).

An estimated three respondents will be required to file a cessation of operations report on Form ATS each year. The Commission estimates that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 6

hours (3 responses × 2 hours = 6 hours). The total cost of compliance for the annual burden is $1,510.50 ($316 × 1.5 hours per response + $59 × 0.5 hours per response = $503.50 per response; $503.50 × 3 responses = $1,510.50). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $176.23 per respondent ($503.5 times 35%). Thus, the Commission estimates the total annualized cost burden would be $528.69 ($176.23 × 3 respondents).

An estimated two respondents will meet certain volume thresholds requiring them to establish standards for granting access on its trading system. The Commission estimates that the average compliance burden for each response would be 5 hours of in-house professional work at $316 per hour. Thus, the total compliance burden per year is 10 hours (2 responses × 5 hours = 10 hours). The total cost of compliance for the annual burden is $3,160 ($316 × 5 hours per response × 2 responses = $3,160). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $553 per response ($1,580 times 35%). Thus, the Commission estimates the total annualized cost burden would be $1,106 ($553 × 2 respondents).

An estimated two respondents will meet certain volume thresholds requiring them to provide notice to any user upon any decision to deny or limit that user's access to the system, and these notice obligations will be triggered an estimated 27 times per year for each respondent. The Commission estimates that the average compliance burden for each response would be 1 hour of in-house professional work at $316 per hour. Thus, the total compliance burden per year is 54 hours (2 respondents × 27 responses each × 1 hour = 54 hours). The total cost of compliance for the annual burden is $17,064 ($316 × 1 hour per response × 54 responses = $17,064). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $110.60 per response ($316 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be $2,986.20 ($110.60 × 27 responses per respondent) and the total annualized cost burden for all respondents would be $5,972.40 ($110.60 × 2 respondents × 27 responses per respondent).

An estimated two respondents will meet certain volume thresholds requiring them to keep records relating to any steps taken to comply with systems capacity, integrity, and security requirements under Rule 301. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $316 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents × 10 hours = 20 hours). The total cost of compliance for the annual burden is $6,320 ($316 × 20 hours = $6,320). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $1,106 per response ($3,160 times 35%). Thus, the Commission estimates the total annualized cost burden would be $2,212 ($1,106 × 2 respondents).

An estimated two respondents will meet certain volume thresholds requiring them to provide a notice to the Commission to report any systems outages, and these notice obligations will be triggered an estimated 5 times per year for each respondent. The Commission estimates that the average compliance burden for each response would be .25 hours of in-house professional work at $316 per hour. Thus, the total compliance burden per year is 2.5 hours (2 respondents × 5 responses each × .25 hours = 2.5 hours). The total cost of compliance for the annual burden is $790 ($316 × .25 hours per response × 10 responses = $790). In addition, estimated overhead costs for printing, copying, and postage equal to 35% of the value of labor costs amount to $27.65 per response ($79 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be $138.25 ($27.65 × 5 responses per respondent) and the total annualized cost burden for all respondents would be $276.50 ($27.65 × 2 respondents × 5 responses per respondent).

Compliance with Rule 301 is mandatory. The information required by the Rule 301 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33271 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63612; File No. SR–FICC–2010–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modifications to the Fee Schedule

December 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 21, 2010, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to modify participant fees. The fee changes are effective as of January 1, 2011.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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. Government Securities Division ("GSD")

(a) The fee structure for submission of a side of a trade and submission of a Repo Transaction is revised to reflect the following:

	Current fee	2011 proposed fee
Up to 50,000 submissions per month	$0.21 per item	$0.27 per item.
50,001 to 100,000 submissions per month	$0.12 per item	$0.15 per item.

(b) The following Netting Fee and Charges have been revised as follows:

	Current fee	2011 proposed fee
1. For each side of a Compared Trade, other than a Repo Transaction, that is netted, a fee equaling the sum (in addition to the comparison fee) of:	(i) $0.16; and (ii) $0.016 per $1 million of par value.	(i) $0.18; and (ii) $0.018 per $1 million of par value.
2. For each Start Leg or Close Leg of a Repo Transaction other than a GCF Repo Transaction that is netted, a fee equaling the sum (in addition to the comparison fee) of:	(i) $0.16; and (ii) $0.016 per $1 million of par value.	(i) $0.18; and (ii) $0.018 per $1 million of par value.

(c) Currently, the charge to a member for the processing and reporting by the GSD of a GCF Repo® transaction is $.05 per million gross dollar amount of such transaction with a minimum charge of $2.50. The current charge makes no distinction between inter-dealer broker members and non-inter-dealer broker members. The proposed new charge will apply different charges to inter-dealer broker members and non-inter-dealer broker members. Specifically, the charge for non-inter-dealer broker members will remain unchanged at $.05 per million with a minimum charge of $2.50. The charge for inter-dealer brokers will be $.025 per million with a minimum charge of $1.25.

(d) The charge for each Deliver Obligation and Receive Obligation created as a result of the netting process is a fee of $0.10 per $1 million of par value. This fee is being increased to $0.15 per $1 million.

(e) Repo Transaction Processing Fee.

a. For a term Repo Transaction other than a GCF Repo Transaction that has been compared and netted, but which has not yet settled, a fee calculated as follows:

i. For Repo Brokers (as defined in subsection III.H of the GSD Fee Structure) with respect to their brokered Repo Transaction activity, a .010 basis point charge (*i.e.,* one hundredth of a basis point) applied to the gross dollar amount of each such Repo Transaction is currently in effect. This will be increased to 0.0175 basis point charge (*i.e.* one and three quarter hundredth of a basis point) and

ii. For all other Netting Members, as well as Repo Brokers with respect to their non-brokered Repo Transaction activity, a .020 basis point charge (*i.e.,* two hundredths of a basis point) applied to the gross dollar amount of each such Repo Transaction is currently in effect. This will be increased to a 0.025 basis point charge (*i.e.* two and a half hundredth of a basis point).

b. For a GCF Repo Transaction that has been compared and netted, but which has not yet settled, a fee calculated as follows:

i. For Repo Brokers acting as GCF–Authorized-Inter-Dealer Brokers, a .010 basis point charge (*i.e.,* one hundredth of a basis point) applied to the gross dollar amount of such GCF Repo Transaction. This will be increased to 0.0175 basis point charge (*i.e.,* one and three quarter hundredths of a basis point) applied to the gross dollar amount of such GCF Repo Transaction and

ii. For all other Netting Members, a .020 basis point charge (i.e., two hundredths of a basis point) applied to the gross dollar amount of such GCF Repo Transaction. This will be increased to 0.025 basis point charge (*i.e.,* two and one half hundredths of a basis point) applied to the gross dollar amount of such GCF Repo Transaction.

2. *Mortgage Backed Securities Division ("MBSC") Fee Changes*

The MBSD fee structure is revised to reflect the following:

	Current old fee	2011 proposed fee
	Par value millions	Par value millions
Up to 2,500 trades per month	$1.44	$1.68
2,501 to 5,000 trades per month	1.32	1.54

	Current old fee	2011 proposed fee
	Par value millions	Par value millions
5,001 to 7,500 trades per month	1.19	1.39
7,501 to 10,000 trades per month	1.11	1.30
10,001 to 12,500 trades per month	0.98	1.15
12,501 and over trades per month	0.85	0.99

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it updates FICC's fee schedule and provides for the equitable allocation of fees among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2010–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FICC–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.dtcc.com/legal/rule_filings/ficc/2010.php*. 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 submission should refer to File No. SR–FICC–2010–10 and should be submitted on or before January 26, 2011.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33252 Filed 1–4–11; 8:45 am]

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[4] 15 U.S.C. 78q–1.

[5] *Supra* note 2.

[6] *Supra* note 3.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63620; File No. SR–NYSEAmex–2010–122]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot, Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or August 1, 2011

December 29, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2011, until the earlier of Securities and Exchange Commission ("SEC" or "Commission") approval to make such pilot permanent or August 1, 2011. The text of the proposed rule change is available at the Exchange, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot ("NMM Pilot") that was adopted pursuant to its merger with the New York Stock Exchange LLC.[3] The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010, September 30, 2010 and January 31, 2011, respectively.[4] The Exchange now seeks to extend the operation of the NMM Pilot, currently scheduled to expire on January 31, 2011, until the earlier of Commission approval to make such pilot permanent or August 1, 2011.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.[5]

Background[6]

In December 2008, NYSE Amex implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, NYSE Amex eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").[10] CCS provides the Display Book®[11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer ("BBO"). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority[12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on four occasions[13] in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2011.

Proposal To Extend the Operation of the NMM Pilot

NYSE Amex established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until August 1, 2011, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes

[3] NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex-2008–62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act"). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[4] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex-2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex-2009–83); and 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex-2010–28); Securities Exchange Act Release No. 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex-2010–86).

[5] *See* SR–NYSE–2010–85.

[6] The information contained herein is a summary of the NMM Pilot. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) for a fuller description.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* NYSE Amex Equities Rule 104.

[9] *See* NYSE Amex Equities Rule 60; *see also* NYSE Amex Equities Rules 104 and 1000.

[10] *See* NYSE Amex Equities Rule 1000.

[11] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE Amex Equities Rule 72(a)(ii).

[13] *See supra* note 2 [sic].

that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

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–NYSEAmex-2010–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2010–122. 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.[16] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–122 and should be submitted on or before January 26, 2011.

[16] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33259 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63614; File No. SR–NYSE–2010–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Permanent NYSE Rule 123C(9)(a)(1) and Amending Rule 123C(9)(a)(1)(iii)

December 29, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 20, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent NYSE Rule 123C(9)(a)(1), which currently operates on a pilot basis. The Exchange also proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4:00 p.m. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.sec.gov*, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent NYSE Rule 123C(9)(a)(1),[4] which has operated on a pilot basis and allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot").[5] The Pilot has recently been extended to June 1, 2011. In addition, in connection with proposing to make the rule permanent, the Exchange proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4:00 p.m. and to make technical amendments related to the obligations of member firms entering interest pursuant to Rule 123C(9)(a)(1).[6]

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker ("DMM") orally at or near the close. NYSE Rule 123C(9)(a)(1) was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often an NYSE Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m. As the Exchange has previously noted in filings with the Commission, the Pilot has been invoked on only five occasions in NYSE-listed securities.[7]

Proposal To Make Permanent the Operation of the Extreme Order Imbalance Rule

The Exchange has completed and tested the system modifications necessary to accept orders electronically after 4 p.m. The Exchange therefore proposes to make Rule 123C(9)(a)(1), as amended, permanent beginning on January 3, 2011.

Because the Exchange can now accept orders electronically after 4 p.m., the Exchange proposes to amend Rule 123C(9)(a)(iii) to eliminate the restriction that only Floor brokers can represent offsetting interest in response to a solicitation of interest pursuant to the Rule. The Exchange further proposes to make technical changes to Rule 123C(9)(a)(1)(iii) to identify what interest may be entered in response to a solicitation, *i.e.,* it must be offsetting interest, a limit order priced no worse than the last sale, and irrevocable. Market participants sending in interest electronically in response to a solicitation after 4 p.m. are responsible for assuring compliance with all provisions of subsection (iii), including that such interest must be on the opposite side of the imbalance, must be limit priced no worse than the last sale, and must be irrevocable. Failure to abide by these requirements could subject a market participant to regulatory review and possible disciplinary action.[8]

The Exchange also proposes to amend Rule 123C(9)(a)(iv) to make clear that all offsetting interest solicited pursuant to the Rule will be executed consistent with Rule 72(c), which governs the allocation of executions among market participants.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are 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. The Exchange believes that this filing is consistent with these principles because the proposed rule change will increase the ability of market participants to enter trading interest designed to prevent significant dislocation to closing prices that could result from extreme order imbalances. The Exchange further believes that this filing is consistent with these principles in that it expands the field of market participants that can directly enter interest in response to a solicitation of offsetting interest after 4 p.m. pursuant to Rule 123C(9)(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11] The Exchange has asked the Commission to waive the 30-day operative delay so that the

[4] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2010–121.

[5] *See* Securities Exchange Act Release Nos. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18) (order granting approval of the Pilot); 60809 (October 9, 2009), 74 FR 53532 (October 19, 2009) (SR–NYSE–2009–104) (extending the operation of the Pilot to December 31, 2009); 61264 (December 31, 2009), 75 FR 1107 (January 8, 2010) (SR–NYSE–2009–131) (extending the operation of the Pilot from December 31, 2009 to March 1, 2010); 61612 (March 1, 2010), 75 FR 10543 (March 8, 2010) (SR–NYSE–2010–11) (extending the operation of the Pilot from March 1, 2010 to June 1, 2010); 62231 (June 4, 2010), 75 FR 33872 (June 15, 2010) (SR–NYSE–2010–42) (extending the operation of the Pilot from June 1, 2010 to December 1, 2010); and SR–NYSE–2010–79 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

[6] In addition, the Exchange proposes to make a technical change to the text of Rule 123C(9)(a)(1)(v).

[7] *See* SR–NYSE–2010–79 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

[8] Prior to implementation of this rule change, the Exchange will issue guidance in the form of an Information Memo that member organizations entering interest will be responsible for complying with Rule 123C(9)(a)(1)(iii).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

proposal may become operative immediately upon filing.

The Exchange reports in connection with this proposal to make permanent Rule 123C(9)(a)(1) that it has completed testing of a functionality that would enable the electronic submission of orders after 4 p.m., and thus now proposes to remove the requirement that all interest entered after 4 p.m. in response to a DMM's solicitation of interest to offset an extreme order imbalance must be represented by Floor brokers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so would allow the benefits of the new systems modifications allowing all market participants to enter orders electronically (rather than solely through a Floor broker) during a Rule 123C(9)(a)(1) suspended close to be realized immediately.[12] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–84 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–NYSE–2010–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2010–84 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33254 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63623; File No. SR–OCC–2010–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Stock Loan Programs

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change would provide OCC's clearing members with clarification regarding the regulatory treatment under Rule 15c3–1 [2] of collateral and margin posted by clearing members participating in stock loan transactions through OCC's Stock Loan/Hedge Program or Market Loan Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC's clearing members with clarification regarding the regulatory treatment under Rule 15c3–1 of collateral and margin posted by clearing members participating in stock loan transactions through OCC's Stock Loan/Hedge Program or Market Loan Program.

1. Background

OCC's Stock Loan/Hedge Program, provided for in Article XXI of OCC's By-Laws and Chapter XXII of OCC's Rules, provides a means for OCC clearing members to submit broker-to-broker stock loan transactions to OCC for clearance. Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members. OCC's Market Loan Program, provided for in Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules, accommodates securities loan transactions executed through electronic trading platforms that match lenders and borrowers on an anonymous basis.

[2] 17 CFR 240.15c3–1.

Anonymous stock loan transactions are initiated when a lender or borrower, which is either an OCC clearing member participating in the Market Loan Program or a non-clearing member that has a clearing relationship with an OCC clearing member participating in the Market Loan Program, accepts a bid/offer displayed on a trading platform. A clearing member participating in the Market Loan Program will be obligated to OCC as principal with respect to transactions effected by its customers that are non-clearing members of a trading platform.

When a stock loan transaction is submitted to and accepted by OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC guarantees the future daily market-to-market payments, which are effected through OCC's cash settlement system, between the lending clearing member and borrowing clearing member and guarantees the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member upon close-out of the stock loan transaction.[3] One advantage of submitting stock loan transactions to OCC is that the stock loan and stock borrow positions then reside in the clearing member's options account at OCC and, to the extent that they offset the risk of options positions carried in the same account, may reduce the clearing member's margin requirement in the account. OCC's risk is, in turn, reduced by having the benefit of the hedge.

One of the tools that OCC uses to manage its exposure to stock loan transactions is the margin that OCC calculates and collects with respect to each account of a clearing member.[4] Such margin consists of a mark-to-market component that is based on the net asset value of the account (*i.e.,* the cost to liquidate the account at current prices). A second component of such margin is the risk component ("Risk Margin") determined under OCC's proprietary margin system on the basis of the net risk of all open positions carried in the account, including stock loan positions as well as options positions.[5] An additional margin requirement ("Additional Margin"), which is solely applicable to stock loan transactions, arises where the collateral provided by the borrowing clearing member is greater than the current market value of the loaned stock. For example, where in a stock loan transaction the borrowing clearing member is required to provide collateral equal to 102% of the current market value of the loaned stock, OCC will charge the corresponding lending clearing member an Additional Margin amount equal to the 2% excess collateral and credit the borrowing clearing member an equal amount. These Additional Margin charges/credits are designed to provide OCC with resources to fully compensate a party to a stock loan transaction in the event that the counterparty defaults and the loaned stock or collateral held by the non-defaulting party is less than the value of the collateral or loaned stock exchanged.

2. Description of Rule Change

In December 2008, the Commission approved an OCC proposed rule change that memorialized OCC's understanding that where stock loan transactions are submitted to OCC for clearance through the Stock Loan/Hedge Program, any Additional Margin that a clearing member is required to deposit with OCC will be treated the same as any other portion of the OCC margin deposit requirement and therefore will not constitute an unsecured receivable that would otherwise be required to be deducted from such clearing member's net capital for purposes of Rule 15c3–1.[6]

Under the current proposed rule change, OCC would expand the prior interpretive relief so that: (i) clearing members also would not be required to take a net capital deduction with respect to any excess of the collateral over the market value of the loaned stock and (ii) such expanded interpretive relief would apply to stock loan transactions submitted to OCC for clearance through the Market Loan Program. As explained above, any over-collateralization of the loaned stock would be secured and offset by Additional Margin charges/credits applied by OCC. Therefore, any such excess collateral on loaned stock also would not be deemed to constitute an unsecured receivable for purposes of Rule 15c3–1.

OCC believes that providing such relief from Rule 15c3–1(c)(2)(iv)(B) is within the policy objectives of the rule. Specifically, while the intent behind the capital charges is to protect the stock borrower against credit exposure to the lender, the borrower has no such credit exposure where OCC is substituted as the central counterparty. Furthermore, under the Market Loan Program, whereby stock loan transactions are effected through an electronic trading platform, it is literally impossible for the clearing member to look through OCC and treat another clearing member as its counterparty.

In connection with the above-referenced initiatives, OCC proposes to amend interpretation .05 to OCC Rule 601 to reflect the regulatory treatment under Rule 15c3–1 of collateral and margin posted by clearing members participating in stock loan transactions through the Stock Loan/Hedge Program and/or Market Loan Program.[7]

OCC states that the proposed change to OCC's Rules is consistent with the purposes and requirements of Section 17A of the Act[8] because it is designed to promote the prompt and accurate clearance and settlement of stock loan transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. OCC further states that the proposed rule change is not inconsistent with the existing rules of OCC including any rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC did not solicit or receive written comments with respect to the proposed rule change. OCC will notify the Commission of any written comments it receives.

[3] With respect to both the Stock Loan/Hedge Program and the Market Loan Program, the loaned securities are moved to the account of the borrower against cash collateral (normally 102%) through the facilities of The Depository Trust Company ("DTC"), and DTC notifies OCC that the movement has occurred at the time the transaction is submitted for clearance. The securities are returned to the lender against return of the cash collateral through the same mechanism.

[4] This OCC margin requirement is in addition to the cash collateral that is transferred to the stock lender and may be deposited in any form constituting acceptable collateral under OCC Rule 604.

[5] OCC does not calculate risk margin on stock loan positions and stock borrow positions separately from risk margin on options positions carried in the same account.

[6] Securities Exchange Act Release No. 59036 (Dec. 1, 2008), 73 FR 74554 (Dec. 8, 2008).

[7] The text of the proposed amendment to interpretation .05 can be found at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_19.pdf.*

[8] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an e-mail to *rule-comment@sec.gov*. Please include File No. SR–OCC–2010–19 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File No. SR–OCC–2010–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and OCC's Web site (*http://www.theocc.com/about/publications/bylaws.jsp*). 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 submission should refer to File No. SR–OCC–2010–19 and should be submitted within January 26, 2011 days after the date of publication.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33304 Filed 1–4–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63621; File No. SR–MSRB–2010–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Amendments to Rule A–13 To Increase Transaction Assessments for Certain Municipal Securities Transactions Reported to the Board and to Institute a New Technology Fee on Reported Sales Transactions

December 29, 2010.

I. Introduction

On September 30, 2010, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change which consists of amendments to Rule A–13 to increase transaction assessments for certain municipal securities transactions reported to the Board and to institute a new technology fee on reported sales transactions. The proposed rule change was published for comment in the **Federal Register** on October 19, 2010.[3] The Commission received fifteen comment letters regarding the proposed rule change, the MSRB's response, and a supplemental response to the MSRB's response.[4]

This order approves the proposed rule change.

II. Background and Description of Proposal

A. Current Sources of MSRB Revenue

Section 15B(b)(2)(J) of the Exchange Act states that the MSRB's rules should "provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board."[5] The MSRB currently levies four types of fees that are generally applicable to dealers pursuant to three separate rules.

MSRB Rule A–12 provides for a $100 fee paid once by a dealer when it first begins to engage in municipal securities activities. MSRB Rule A–13 provides for a) an underwriting fee of $.03 per $1000 par value of municipal securities purchased in a primary offering (with specified exceptions), and b) a transaction fee (the "transaction fee") of $.005 per $1000 par value of sale transactions of municipal securities (with specified exceptions). Finally, MSRB Rule A–14 provides for an annual fee of $500 from each dealer who conducts municipal securities activities. In addition, since this proposed rule was filed, the MSRB has amended Rule A–12 to establish an initial fee of $100

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–63095 (October 13, 2010), 75 FR 64372 (the "Commission's Notice").

[4] *See* e-mail from Coastal Securities, Inc., dated November 8, 2010 ("Coastal Securities Letter"); letter from Bond Dealers of America, dated November 9, 2010 ("BDA Letter I"); letter from Hartfield Titus & Donnelly, LLC, dated November 9, 2010 ("HTD Letter"); letter from the Securities Industry and Financial Markets Association, dated November 9, 2010 ("SIFMA Letter I"); e-mail from RW Smith Associates, Inc., dated November 9, 2010 ("RW Smith Letter"); letter from Southwest Securities, Inc., dated November 9, 2010 ("Southwest Securities Letter"); letter from the Government Finance Officers Association, dated November 9, 2010 ("GFOA Letter"); letter from TD Ameritrade Holding Corporation, dated November 9, 2010 ("TD Ameritrade Letter"); letter from Edward Jones, dated November 9, 2010 ("Edward Jones Letter I"); letter from BMO Capital Markets, dated November 9, 2010 ("BMO Letter"); letter from Morgan Stanley Smith Barney LLC, dated November 10, 2010 ("Morgan Stanley Letter"); letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, dated November 19, 2010 ("MSRB Response Letter"); letter from Jeffries & Company, Inc., dated November 29, 2010 ("Jeffries Letter"); letter from the Securities Industry and Financial Markets Association, dated December 2, 2010 ("SIFMA Letter II"), letter from Bond Dealers of America, dated December 14, 2010 ("BDA Letter II"); letter from Edward Jones, dated December 14, 2010 ("Edward Jones Letter II"); and letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, dated December 28, 2010 ("Supplemental MSRB Response Letter").

[5] 15 U.S.C. 78*o*-4(b)(2)(J).

payable by municipal advisors prior to engaging in municipal advisory activities and amended Rule A–14 to establish an annual fee of $500 for municipal advisors.[6]

According to the MSRB, the transaction fee was last modified in 2000 when the Board commenced assessments on customer sale transactions reported by dealers. The transaction fee has not been increased since that date. The MSRB stated in its proposal that approximately 90% of its revenue is generated through its underwriting and transaction fees. According to the MSRB, in fiscal year 2009, approximately 55% of its revenue was generated by underwriting fees and approximately 36% of its revenue was generated by transaction fees. The MSRB also stated that the underwriting and transaction fees assessed pursuant to Rule A–13 are generally proportionate to a dealer's activity within the industry, as based on the par value amount of underwriting and customer and inter-dealer transactions during the year.

B. Proposal

The MSRB proposes to increase the amount of the transaction fee assessed on the par value of inter-dealer and customer sale transactions reported to the MSRB by dealers under MSRB Rule G–14(b), except for transactions currently exempted from the transaction fee as provided in MSRB Rule A–13(c)(iii), from $.005 per $1000 par value to $.01 per $1000 par value of such sale transactions. Transactions exempted from the transaction fee consist of sale transactions in municipal securities that have a final stated maturity of nine months or less or that, at the time of trade, may be tendered at the option of the holder to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent. The MSRB expects that its proposed increase in the transaction fee would generate an estimated $7 million in revenue annually.

In addition, the MSRB proposes to impose a technology fee, assessed at $1.00 per transaction for each sale transaction reported to the MSRB by dealers, under MSRB Rule G–14(b) (the "technology fee"). The exemptions from the transaction fee, as described above, would not apply to the technology fee. The MSRB expects that the new technology fee would generate an estimated $10 million in revenue annually. The technology fee would be transitional in nature and would be reviewed by the MSRB annually to determine whether it should continue to be assessed.[7] The MSRB proposes to use the technology fee to establish a technology renewal fund, which would be segregated for accounting purposes.

C. Purpose of the Proposed Rule

1. Transaction Fee

In the proposal, the MSRB stated that the purpose of the proposed increase in the transaction fee is to assess reasonable fees necessary to defray the costs and expenses of operating and administering the MSRB.[8] Specifically, the MSRB stated that the expenses of the MSRB are increasing and additional revenue is necessary to meet projected expenses associated with ongoing operations. The MSRB indicated that several factors have contributed to the recent, large increase in operating expenses. First, over the last two years, the MSRB has significantly improved transparency in the municipal securities market by developing and implementing market information transparency systems including the Short-Term Obligation Rate Transparency ("SHORT") system for interest rate resets and the Electronic Municipal Market Access ("EMMA") system for display of disclosures and trade data. Second, effective October 1, 2010, amendments to Section 15B of the Exchange Act contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act[9] (the "Dodd-Frank Act') expanded the MSRB's mission to include regulation of municipal advisors and the protection of municipal entities. Third, pursuant to the Dodd-Frank Act, the MSRB has also been given additional responsibilities in connection with providing enforcement and examination support to the Commission, the Financial Industry Regulatory Authority ("FINRA"), and the Federal bank regulators.

2. Technology Fee

In its proposal, the MSRB stated that it intends to use the technology renewal fund to fund replacement of aging and outdated technology systems and to fund new technology initiatives. In particular, the MSRB stated that funding is needed to ensure the operational integrity of the MSRB's information systems, retire and update computer hardware and software, and conduct ongoing risk management including business continuity activities and system maintenance.

In the proposal, the MSRB stated that it will continue to review its assessments on the market participants it regulates to ensure that costs of rulemaking are appropriately allocated among the entities it regulates. Although the MSRB recognizes that an appropriate allocation of such regulatory costs may not be feasible during the transition of the MSRB to its broader mission, it stated that it expects to revisit the manner in which its activities are funded in the coming years, as appropriate. The MSRB also restated its commitment to ensure that its assessments are balanced based in large measure on the level of activity of all of its regulated entities.

A more complete description of the proposal is contained in the Commission's Notice.[10]

The MSRB has requested an effective date for the proposed rule change of January 1, 2011.

III. Discussion of Comments and MSRB's Response

The Commission received fifteen comment letters and two responses from the MSRB to the comment letters.[11] The comment letters and the MSRB's responses are discussed in greater detail below.

A. Comments Requesting More Transparency in the Budget Process and Additional Justification for the Size and Timing of Revenue Increase.

Several commenters asked for more transparency in the MSRB's budget process and noted that the fee increases were sought without industry input prior to the filing of the proposed rule change and that additional dialogue with industry participants should have been undertaken before determining the appropriate funding levels and manner of assessing fees.[12]In the MSRB Response Letter, the MSRB noted that "a number" of the technology systems creating the need for additional operating revenue and the technology fee "are well known to the municipal securities industry through the MSRB's prior notice and comment process and its filings with the Commission."[13] The MSRB further explained in the MSRB Response Letter that "externally facing technology initiatives normally must be undertaken through the normal MSRB rulemaking process, which includes

[6] *See* Securities Exchange Act Release No. 63313 (File No. SR–MSRB–2010–14) (November 12, 2010).

[7] *See* Supplemental MSRB Response Letter.

[8] *See* Commission's Notice, *supra* note 3.

[9] Public Law 111–203, 124 Stat. 1376 (2010).

[10] *See supra* note 3.

[11] *See supra* note 4.

[12] *See* GFOA Letter, HTD Letter, Morgan Stanley Letter, RW Smith Letter, SIFMA Letter I, Jeffries Letter and Southwest Securities Letter.

[13] *See* MSRB Response Letter.

extensive opportunity for public comment. The MSRB believes that this is the appropriate process for receiving input from industry participants with regard to its regulatory and information system initiatives, rather than through a process whereby industry participants could seek to influence which initiatives the MSRB pursues by attempting to limit the resources available to it."[14]

Commenters also stated that the MSRB did not provide sufficient justification for the size of the proposed transaction fee increase and the imposition of the technology fee,[15] with several commenters stating that the MSRB should have provided details on matters such as projections of operational costs, plans for demonstrating controlling such costs, expected revenue in future years, projected budgets, financial forecasts, and planned technology initiatives in requesting the increased transaction fee and the new technology fee.[16] Several commenters stated that the MSRB should be required to give more detail on the magnitude of its planned technology upgrade.[17]

Although the MSRB did not provide detailed revenue or budget projections, the MSRB noted in the proposal and in the MSRB Response Letter that, "the MSRB's 2009 audited financial statement reflected an increase in expenses from $18.6 million for the fiscal year ended September 30, 2008 to $21.3 million for the fiscal year ended September 30, 2009, representing an increase of 14.5%."[18] The MSRB further noted that it "expects that expenses for [fiscal year 2010] to be approximately $23.1 million, representing an additional increase of 8.5% over the previous year, including an increase in market information transparency program expenses of 13%."[19] From fiscal year 2008 to fiscal year 2010 the operating expenses of the MSRB have increased approximately 25%.[20] Furthermore, the MSRB "forecasts total operating expenses to increase to approximately $29.2 million in fiscal year 2011, which would be a 26% increase in expenses over 2010, and approximately $31.8 million in fiscal year 2012, which would be a 38% increase in expenses over fiscal year 2010."[21] According to the MSRB, this increase in expenses "reflects the many recent MSRB initiatives in support of the MSRB's investor protection mandate, including the development and launch of the primary market disclosure electronic library, the collection of secondary market disclosures, establishment of our [SHORT] system for interest rate resets, the [EMMA] system for display of disclosures and trade data, and other enhancements to our information systems."[22] The MSRB also stated that it needs additional funding "to satisfy its obligations under the [Dodd-Frank Act], which requires the MSRB to draft rules regarding the activities of municipal advisors as well as rules for the protection of municipal entities and obligated persons."[23]

In addition, in discussing the need for the technology fee, the MSRB asserted that "[m]aintaining the EMMA and SHORT systems, together with the Real-Time Transaction Reporting System ("RTRS"), ensuring their operational stability, and employing sound risk management practices, including adequate redundancies, must be a priority."[24] The MSRB further noted that the technology fee is needed because "[i]n undertaking its various information systems, the MSRB has not previously set aside reserves for replacement of these systems, instead relying on its general operating reserves to fund all development and any systems upgrades and replacements. Certain of the existing public information systems operated by the MSRB, including RTRS and the public access system for Forms G–37 under Rule G–37, on political contributions and prohibitions on municipal securities business, now rely on dated technology and can be expected to need comprehensive re-engineering in the coming years."[25]

Commenters[26] also noted that the MSRB has not fully explained why the proposed fees must become effective on January 1, 2011, given the lack of justification for the fee increases and the size of the MSRB surplus.

Two commenters stated that the MSRB should include consideration of revenues from fine sharing with FINRA in determining whether to increase the transaction fee and impose a technology fee.[27] In response, the MSRB stated that "any revenues derived from such provision [of the Dodd-Frank Act] would, of course, be taken into account as the MSRB prepares future budgets and reviews its sources of revenue and the appropriate levels of assessments in future years, although the Board would establish appropriate budgeting safeguards against allowing the prospects of realizing fine revenue from influencing its rulemaking activities."[28]

B. Comments Regarding Municipal Advisors' Share of the Cost of Regulation

Several commenters raised concerns about what they referred to as the disproportionate and inequitable cost of regulation borne by dealers, noting that the MSRB recently obtained jurisdiction over municipal advisors and that those advisors should bear not only the entire cost of their own regulation, but also part of the cost of maintaining the MSRB's information systems.[29] One commenter suggested that the MSRB should first assess fees on municipal advisors, beyond the establishment of an initial and annual fee,[30] and only afterwards consider dealer fees.[31]

In response, the MSRB stated that the "fairness of assessments on all classes of regulated entities is to be viewed on a long-term basis and not within a narrow window of time or on a per-rule basis."[32] The MSRB noted that it "firmly believes that it must be adequately funded to undertake all necessary rulemaking in the service of protecting investors, municipal entities, obligated persons and the public interest with rules applicable to dealers, municipal advisors or both without the constraint of determining whether such rulemaking bears a close relationship to the level of funding obtained from each constituency at a particular point in

[14] *Id.*

[15] *See* BDA Letter I, Coastal Securities Letter, GFOA Letter, HTD Letter, Morgan Stanley Letter, RW Smith Letter, SIFMA Letter I, Southwest Securities Letter and TD Ameritrade Letter. Some commenters calculated the size of the increase in MSRB revenues over the previous year to be approximately 80% without distinguishing between the proposed uses of the separate fees. *See* BDA Letter I, HTD Letter, RW Smith Letter, SIFMA Letter I and TD Ameritrade Letter.

[16] *See* BDA Letter I, Coastal Securities Letter, GFOA Letter, HTD Letter, RW Smith Letter, SIFMA Letter I and TD Ameritrade Letter.

[17] *See, e.g.,* HTD Letter and BDA Letter I.

[18] *See* MSRB Response Letter.

[19] *Id. See also,* Supplemental MSRB Response Letter confirming that fiscal year 2010 expenses were approximately $23.1 million.

[20] *See* Supplemental MSRB Response Letter. Expenses for market information transparency programs (EMMA, SHORT and RTRS) and operations alone increased approximately 57% from fiscal year 2008 to fiscal year 2010. *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See, e.g.,* BDA Letter I.

[27] *See* GFOA Letter and SIFMA Letter I.

[28] *See* MSRB Response Letter.

[29] *See* BDA Letter I, Coastal Securities Letter, HTD Letter, Morgan Stanley Letter, RW Smith Letter, Jeffries Letter and SIFMA Letter I.

[30] *See supra* note 6, and accompanying text.

[31] *See* RW Smith Letter.

[32] *See* MSRB Response Letter.

time." [33] The MSRB further noted that it "expects to continuously review its fee structure to ensure that, over the long-run, there is a reasonable relationship between the amounts assessed to a specific constituency and the level of rulemaking, system development and operational activities undertaken by the MSRB in connection with such constituency, to the extent consistent with the Dodd-Frank Act." [34]

C. Comments Regarding the Effect on Retail Dealers, Retail Clients, Brokers' Brokers and Issuers

Several of the commenters expressed concern that the burden of the proposed rule change and, in particular, the technology fee, will be borne disproportionately by retail firms and their customers since the technology fee of $1 applies to all sales transactions, regardless of size.[35] One commenter estimated that the combination of the proposed transaction fee and proposed technology fee assessed on retail trades of $25,000 would represent an increase of 900% over the current transaction fee,[36] while another commenter stated that its total MSRB fees for orders it processes for its clients would increase by over 11,000% per month.[37] The MSRB responded that "the combination of increasing the existing transaction fee based on par value of trades and imposing the new technology fee on individual transactions, regardless of trade size, provides for a mix of assessment measurements that in general further reduces the MSRB's reliance on a circumscribed group of regulated entities for the bulk of its revenues." [38] The MSRB further noted with respect to the technology fee that "[w]hile the proposed technology fee would, as a percentage of the entire transaction, be larger for retail-size transactions, the MSRB observes that the large percentage increases for small transactions noted by some commenters, if assumed to be accurate, fail to take into account that, under the current formula based solely on trade size, the actual amount of the assessment is extremely small and will continue to be small and likely would have only a negligible effect on overall transaction costs for retail investors even after such increases. Further, every transaction, regardless of size, draws equally on MSRB information systems and, therefore, it is appropriate that at least a portion of the MSRB's revenues reflect this universal usage of such resources." [39]

One commenter noted that the proposed rule change, if approved, would mean a fundamental shift in the cost of operating the MSRB from being largely borne by primary market participants to secondary market participants.[40] Two commenters stated that broker's brokers would be disproportionately affected because their activities typically involve a large number of retail-sized transactions.[41] Another commenter stated that affiliate-to-affiliate transfers used to fill some customer orders would result in duplicative assessments.[42] One commenter suggested further raising the existing transaction fee or basing the technology fee on par value as potential alternatives to the $1.00 per transaction technology fee included in the proposed rule change.[43] In its response, the MSRB stated that it "specifically intended that the proposed rule change would shift the source of its dealer-based revenues toward market participants engaged in sales and trading of municipal securities. As among dealers, the MSRB views this shift as broadening the universe of dealers that share the burden of funding MSRB activities since the underwriting fee is assessed against a significantly narrower group of dealers—that is, those that act as underwriters of new issues—than the group of dealers that engage in sales and trading of municipal securities, which includes firms active in both the secondary and primary market." [44]

Several commenters [45] expressed concern regarding the imposition of transaction-based assessments on situations where multiple separate transactions may occur to effect a movement of a position in a security. In its response, the MSRB noted that such situations are reflective of the existing structure of the transaction fee and do not arise anew as a result of the proposed rule change. The MSRB further stated that the "rule proposal is more equitable to market participants in that the transaction fee exemptions that apply to short-term securities would not apply to the technology fee, thereby broadening the base on which such fee is assessed." In addition, the MSRB acknowledged that the proposed rules shift the cost burden more towards the broader sales and trading market, and that firms engaging solely or primarily in sales and trading activities, and not in underwriting activities, may view this shift as having a greater affect on such firms. As noted above, however, the MSRB stated that it specifically intended such a shift and believes that any such shift is appropriate as it would broaden the universe of market participants that share the burden of funding MSRB activities.[46]

Another commenter urged the MSRB to ensure that fees assessed on dealers are not passed, directly or indirectly, to issuers, stating that some issuers see MSRB fees as line items on their transactions.[47] In its response, the MSRB noted that MSRB Rule A–13(e) provides that no dealer shall charge or otherwise pass through the fee required under the rule to an issuer of municipal securities, but also that Rule A–13(e) would most logically apply to the underwriting assessment imposed under such rule, which is not the subject of the current rule filing.[48] The MSRB urged any issuer of municipal securities that believes a dealer is violating this rule provision to contact the appropriate enforcement agency with any relevant information regarding such potential rule violation.[49]

D. Comments Regarding use of MSRB's Existing Surplus

Some commenters stated that they believe the MSRB has an excessively large surplus that should be utilized to fund projects, regulation, and technology renewal prior to implementation of any fee increases or new fees.[50] Two commenters suggested that non-profit organizations only need 25% or three months of reserve to cover expenses.[51]

In its response, the MSRB noted that other "non-profit organizations active in the municipal securities market as well as other self-regulatory organizations have reserves of comparable relative size." [52] The MSRB also responded that

[33] *Id.*

[34] *Id.*

[35] *See* BDA Letter I, Coastal Securities Letter, Morgan Stanley Letter, SIFMA Letter I, Southwest Securities Letter and TD Ameritrade Letter.

[36] *See* SIFMA Letter I.

[37] *See* TD Ameritrade Letter.

[38] *Id.*

[39] *Id.*

[40] *See* HTD Letter.

[41] *See* HTD Letter and RW Smith Letter. These commenters also suggest that transactions routed through broker's brokers tend to involve a chain of two or more sales transactions that would result in multiple assessments on the various professionals involved in moving bonds from one investor to another.

[42] *See* Morgan Stanley Letter.

[43] *See* Edward Jones Letter I.

[44] *See* MSRB Response Letter.

[45] *See, e.g.,* BDA Letter I, Coastal Securities Letter, Edward Jones Letter I, SIFMA Letter I, Southwest Securities Letter and TD Ameritrade Letter.

[46] *See supra* note 44, and accompanying text.

[47] *See* GFOA Letter.

[48] *See* MSRB Response Letter.

[49] *Id.*

[50] *See* HTD Letter, RW Smith Letter, SIFMA Letter I and Southwest Securities Letter.

[51] *See* RW Smith Letter and SIFMA Letter I.

[52] *See* MSRB Response Letter. Specifically, the MSRB noted that the National Futures Association,

Continued

its "cash and liquid reserves are projected to decrease significantly over the next three years, if additional funding is not approved and underwriting and transaction activity remains level." [53]

E. Comments Regarding Alternative Revenue Models

Two commenters suggested that the MSRB consider an entirely new revenue model, where firms are assessed based on their gross income from municipal securities activities, including underwriting, trading, sales, and advisory services.[54] Another commenter noted, however, that there is not industry consensus for this approach and further analysis would be needed.[55]

In response, the MSRB stated that "any such change could not realistically be effected in a sufficiently timely manner to ensure that the MSRB could continue to operate effectively given its current resource base and operational commitments, as well as its statutory mandate." [56] The MSRB further noted that "[u]nlike FINRA, which has jurisdiction over its members that encompasses (with limited exceptions) their entire scope of activities, the MSRB's regulatory jurisdiction is limited to the [activities] specified in Section 15B of the Exchange Act. Thus, in imposing its revenue-based assessment, FINRA does not face some of the same constraints and need for clearly defining the extent of activities subject to such an assessment as would the MSRB." [57] The MSRB explained that "[f]or dealers, sales and trading transactions and underwriting activities are the key types of activities from which they derive revenues that are clearly tied to the MSRB's statutory mandate. The other type of activity * * * that is clearly tied to the MSRB's statutory mandate is * * * municipal advisory activities." [58] The MSRB asserted that "assessments based on the MSRB's current model [of assessing sales and trading activities and underwriting activities], together with an appropriate assessment to be developed on municipal advisory activities, serve as a reasonable approximation of the type of assessments that would ultimately be imposed under a revenue-based system." [59]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB [60] and, in particular, the requirements of Section 15B(b)(2)(J) of the Exchange Act [61] and the rules and regulations thereunder. Section 15B(b)(2)(J) of the Exchange Act requires, among other things, that the MSRB's rules be designed to provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.[62]

The Commission believes that the proposed rule change is consistent with the Exchange Act because the proposed increase in the transaction fee and the imposition of the new technology fee will help defray the costs and expenses of administering the Board. In particular, the increase in the transaction fee will help offset the MSRB's expected increase in expenses due to, among other things, the additional regulatory requirements imposed on it by the Dodd-Frank Act.[63] Similarly, the new technology fee will help offset expenses the MSRB expects to incur due to the MSRB's expanding technology requirements and the need to replace and update existing technology, including the MSRB's EMMA and SHORT systems, the RTRS, as well as other enhancements to its disclosure and information systems. The need for an increase of the transaction fee and imposition of the technology fee is further supported by the substantial increases in the costs incurred by the Board in fiscal years 2009 and 2010—aggregating approximately 25% over a two year period [64]—and the MSRB's expectation that its costs will continue to increase due to its amplified responsibilities and need to fund the replacement of aging and outdated technology systems and new technology initiatives.

The Commission recognizes the concerns raised by some commenters that the increase in transaction fees and the new technology fee will be used to subsidize municipal advisor regulation. As noted above, however, the MSRB has already taken a first step to assess fees on municipal advisors to account for a portion of the costs of needed regulatory activity.[65] The MSRB also stated that it expects to assess other fees on municipal advisors as is appropriate.[66] Furthermore, the MSRB has proposed to account for technology fee collections in a separate technology renewal fund, which should help to ensure that such funds are used only for the replacement and renewal of outdated technology systems and to fund new technology initiatives.

The Commission also notes that all fees assessed by the MSRB are reviewed by the Board on an on-going basis to help ensure that they continue to be appropriately assessed, meet the resource needs of the MSRB, and are appropriate from the standpoint of the fair allocation of burdens for supporting MSRB activities.[67] In addition, with respect to the new technology fee in particular, the MSRB stated that it will annually review whether this fee should continue to be assessed and, if so, at what level and indicated that "[s]uch review will take into consideration, among other things * * *, issues of equity among regulated entities." [68]

Further, the Commission believes that the broadening of the MSRB's proposed fees to all types of dealers—in order to more equitably assess all entities regulated by the MSRB—is consistent with the MSRB's pledge to continue to review all of its fees to ensure that their impact is reasonable and appropriate among its different types of regulated entities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[69] that the proposed rule change (SR–

a "self-regulatory organization similar in size and structure to the MSRB * * * [also] maintains cash and liquid reserves equivalent to approximately one year's expenses." *See* Supplemental MSRB Response Letter.

[53] *Id.*

[54] *See* HTD Letter and SIFMA Letter I. SIFMA Letter I also included a suggestion that the Commission consider imposing a fee on mutual funds and Commission registered investment advisers with municipal market clients and remit the revenue from such fees to the MSRB.

[55] *See* Morgan Stanley Letter.

[56] *See* MSRB Response Letter.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[61] 15 U.S.C. 78*o*–4(b)(2)(J).

[62] Effective October 1, 2010, pursuant to the Dodd-Frank Act, the applicability of Section 15B(b)(2)(J) of the Exchange Act was extended to municipal advisors.

[63] *See supra* note 9, and accompanying text.

[64] *See supra* note 20, and accompanying text.

[65] *See supra* note 6, and accompanying text.

[66] *See* MSRB Response Letter.

[67] *Id.*

[68] *Id.*

[69] 15 U.S.C. 78s(b)(2).

MSRB–2010–10), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[70]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33269 Filed 1–4–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63613; File No. SR–NYSEAmex–2010–121]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Permanent NYSE Amex Equities Rule 123C(9)(a)(1) and Amending Rule 123C(9)(a)(1)(iii)

December 29, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 20, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent NYSE Amex Equities Rule 123C(9)(a)(1), which currently operates on a pilot basis. The Exchange also proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4 p.m. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent NYSE Amex Equities Rule 123C(9)(a)(1),[4] which has operated on a pilot basis and allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot").[5] The Pilot has recently been extended to June 1, 2011. In addition, in connection with proposing to make the rule permanent, the Exchange proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4:00 p.m. and to make technical amendments related to the obligations of member firms entering interest pursuant to Rule 123C(9)(a)(1).[6]

Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker ("DMM") orally at or near the close. NYSE Amex Equities Rule 123C(9)(a)(1) was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often an NYSE Amex Equities Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m. As the Exchange has previously noted in filings with the Commission, the Pilot has been invoked only twice in NYSE Amex-listed securities.[7]

Proposal To Make Permanent the Operation of the Extreme Order Imbalance Rule

The Exchange has completed and tested the system modifications necessary to accept orders electronically after 4 p.m. The Exchange therefore proposes to make Rule 123C(9)(a)(1), as amended, permanent beginning on January 3, 2011.

Because the Exchange can now accept orders electronically after 4 p.m., the Exchange proposes to amend Rule 123C(9)(a)(iii) to eliminate the restriction that only Floor brokers can represent offsetting interest in response to a solicitation of interest pursuant to the Rule. The Exchange further proposes to make technical changes to Rule 123C(9)(a)(1)(iii) to identify what interest may be entered in response to a solicitation, *i.e.,* it must be offsetting interest, a limit order priced no worse than the last sale, and irrevocable. Market participants sending in interest electronically in response to a solicitation after 4 p.m. are responsible for assuring compliance with all provisions of subsection (iii), including that such interest must be on the opposite side of the imbalance, must be limit priced no worse than the last sale, and must be irrevocable. Failure to abide by these requirements could subject a market participant to regulatory review and possible disciplinary action.[8]

The Exchange also proposes to amend Rule 123C(9)(a)(iv) to make clear that all

[70] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2010–84.

[5] *See* Securities Exchange Act Release Nos. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSEAltr–2009–15) (order granting approval of the Pilot); 60808 (October 9, 2009), 74 FR 53539 (October 19, 2009) (SR–NYSEAmex–2009–70) (extending the operation of the Pilot to December 31, 2009); 61265 (December 31, 2009), 75 FR 1094 (January 8, 2010) (SR–NYSEAmex–2009–96) (extending the operation of the Pilot from December 31, 2009 to March 1, 2010); 61611 (March 1, 2010), 75 FR 10530 (March 8, 2010) (SR–NYSEAmex–2010–15) (extending the operation of the Pilot from March 1, 2010 to June 1, 2010); 62293 (June 15, 2010), 75 FR 35862 (June 23, 2010) (SR–NYSEAmex–2010–50) (extending the operation of the Pilot from June 1, 2010 to December 1, 2010); and SR–NYSEAmex–2010–113 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

[6] In addition, the Exchange proposes to make a technical change to the text of Rule 123C(9)(a)(1)(v).

[7] *See* SR–NYSEAmex–2010–113 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

[8] Prior to implementation of this rule change, the Exchange will issue guidance in the form of an Information Memo that member organizations entering interest will be responsible for complying with Rule 123C(9)(a)(1)(iii).

offsetting interest solicited pursuant to the Rule will be executed consistent with Rule 72(c), which governs the allocation of executions among market participants.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are 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. The Exchange believes that this filing is consistent with these principles because the proposed rule change will increase the ability of market participants to enter trading interest designed to prevent significant dislocation to closing prices that could result from extreme order imbalances. The Exchange further believes that this filing is consistent with these principles in that it expands the field of market participants that can directly enter interest in response to a solicitation of offsetting interest after 4 p.m. pursuant to Rule 123C(9)(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Exchange reports in connection with this proposal to make permanent Rule 123C(9)(a)(1) that it has completed testing of a functionality that would enable the electronic submission of orders after 4 p.m., and thus now proposes to remove the requirement that all interest entered after 4 p.m. in response to a DMM's solicitation of interest to offset an extreme order imbalance must be represented by Floor brokers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so would allow the benefits of the new systems modifications allowing all market participants to enter orders electronically (rather than solely through a Floor broker) during a Rule 123C(9)(a)(1) suspended close to be realized immediately.[12] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–121. 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–NYSEAmex–2010–121 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33253 Filed 1–4–11; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63615; File No. SR–NYSEAmex-2010–123]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Until the Earlier of the Securities and Exchange Commission Approval To Make Such Pilot Permanent or August 1, 2011

December 29, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,[2] notice is hereby given that on December 20, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (*See* Rule 107B—NYSE Amex Equities), currently scheduled to expire on January 31, 2011, until the earlier of the Securities and Exchange Commission's ("SEC" or "Commission") approval to make such Pilot permanent or August 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[3] currently scheduled to expire on January 31, 2011, until the earlier of Commission approval to make such Pilot permanent or August 1, 2011.

Background [4]

In October 2008, the New York Stock Exchange LLC ("NYSE") implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[5] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (*see* NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange, creating a new category of market participant, the Designated Market Maker or "DMM." [6] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[7]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot has been extended several times, most recently to January 31, 2011.[8] The NYSE is in the process of requesting an extension of their SLP Pilot until August 1, 2011 or until the Commission approves the pilot as permanent.[9] The extension of the NYSE SLP Pilot until August 1, 2011 runs parallel with the extension of the NMM pilot: August 1, 2011, or until the Commission approves the NMM Pilot as permanent.

Proposal To Extend the Operation of the NYSE Amex Equities SLP Pilot

NYSE Amex Equities established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. NYSE Amex Equities Rule 107B is based on NYSE Rule 107B. NYSE Amex Rule 107B was filed with the Commission on December 30, 2009, as a "me too" filing for immediate effectiveness as a pilot program.[10] The NYSE Amex Equities SLP Pilot is scheduled to end operation on January 31, 2011 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot and the NYSE SLP Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (NYSE Amex Equities Rule 107B) should be made permanent.

Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until August 1, 2011, in order to allow the Exchange to formally submit a filing to the Commission to

[3] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex-2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release Nos. 61841 (April 5, 2010), 75 FR 18560 (April 12, 2010) (SR–NYSEAmex-2010–33) (extending the operation of the SLP Pilot to September 30, 2010); 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR–NYSEAmex-2010–88) (extending the operation of the SLP Pilot to January 31, 2011); 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010); and 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the operation of the SLP Pilot to January 31, 2011).

[4] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note 1 [sic] and *infra* [sic] note 3 for a fuller description of those pilots.

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] *See* NYSE Rule 103.

[7] *See* NYSE and NYSE Amex Equities Rules 107B.

[8] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP pilot program until November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending SLP pilot program until March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the SLP Pilot until September 30, 2010); and 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the SLP Pilot until January 31, 2011).

[9] *See* SR–NYSE–2010–86.

[10] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex-2009–98).

convert the Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the NYSE Amex Equities SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before January 31, 2011.[11]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) the Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex-2010–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2010–123. 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.[14] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2010–123 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33255 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

[11] The NMM Pilot was scheduled to expire on January 31, 2011 as well. On December 17, 2010 the NYSE filed to extend the NMM Pilot [sic] until August 1, 2011 (*See* SR–NYSE–2010–85) (extending the operation of the New Market Model Pilot to August 1, 2011).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63616; File No. SR–NYSE–2010–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Until the Earlier of the Securities and Exchange Commission Approval To Make Such Pilot Permanent or August 1, 2011

December 29, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (*See* Rule 107B), currently scheduled to expire on January 31, 2011, until the earlier of the Securities and Exchange Commission's ("SEC" or "Commission") approval to make such Pilot permanent or August 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[3] currently scheduled to expire on January 31, 2011, until the earlier of Commission approval to make such Pilot permanent or August 1, 2011.

Background [4]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[5] The SLP Pilot was launched in coordination with the NMM Pilot (*see* Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[6] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[7]

The SLP Pilot is scheduled to end operation on January 31, 2011 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before January 31, 2011.[8]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until August 1, 2011, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule.[9]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) the Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule

[3] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release Nos. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010); and 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the operation of the SLP Pilot to January 31, 2011).

[4] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note 1 [sic] for a fuller description of those pilots.

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] *See* NYSE Rule 103.

[7] *See* NYSE Rule 107B.

[8] The NMM Pilot was scheduled to expire on January 31, 2011. On December 17, 2010 the Exchange filed to extend the NMM Pilot until August 1, 2011 (*See* SR–NYSE–2010–85) (extending the operation of the New Market Model Pilot to August 1, 2011); *See also* Securities Exchange Act Release Nos. 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending the operation of the New Market Model Pilot to January 31, 2011); 61724 (March 17, 2010), 75 FR 14221 (SR–NYSE–2010–25) (extending the operation of the New Market Model Pilot to September 30, 2010); and 61031 (November 19, 2009), 74 FR 62368 (SR–NYSE–2009–113) (extending the operation of the New Market Model Pilot to March 30, 2010).

[9] The NYSE Amex SLP Pilot (NYSE Amex Equities Rule 107B) is also being extended until August 1, 2011 or until the Commission approves it as permanent (*See* SR–NYSEAmex–2010–123).

change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–86 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–NYSE–2010–86. 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 website (*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.[12] 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–NYSE–2010–86 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33256 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63619; File No. SR–Phlx–2010–181]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto by NASDAQ OMX PHLX LLC Relating to Active SQF Port Fee

December 29, 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 16, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on December 29, 2010 ("Amendment No. 1") to clarify the purpose of the proposed fee change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Active Specialized Quote Feed ("SQF") Port Fee to create a tiered schedule of fees.

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 for trades occurring on and after January 3, 2011.

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 amend the Active SQF Port Fees to establish a tiered schedule of fees.[3] SQF is an interface that enables specialists, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") to connect and send quotes into Phlx XL. The Exchange released SQF 6.0 on October 11, 2010.[4] The Exchange anticipates that member organizations will utilize both SQF 5.0 and SQF 6.0 for a period of time.

Currently, the Exchange assesses an Active SQF Port Fee of $500 per month per port. The Exchange would propose to eliminate the $500 Active Port Fee and instead assess members an Active Port Fee as follows:

[3] Active SQF ports refer to ports that receive inbound quotes at any time within that month.

[4] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

Number of Active SQF Ports	Cost per port per month
0–4	$350
5–18	1,250
19–40	2,350
40 and over	3,000

The Exchange proposes to cap the Active SQF Port Fees at $40,000 per month through March 31, 2011 ("Cap"). On April 1, 2011, there will no longer be a Cap in effect for the Active SQF Port Fee. The purpose of the Cap is to ensure member organizations are not assessed fees in excess of the Active SQF Port fees, which fees would have been charged under the fixed rate of $500 per month per port, during the transition from SQF 5.0 to SQF 6.0.[5] The Exchange believes that member organizations will utilize less SQF 6.0 ports than SQF 5.0 ports and that all member organizations should have transitioned to SQF 6.0 by March 31, 2011. The Exchange believes that the proposed tiered Active SQF Port Fees will create a more efficient use of Exchange resources by providing members an incentive to utilize the minimum number of ports necessary for their business. The Exchange believes that all members will benefit from a faster and more efficient system if ports are efficiently utilized by members.[6]

The Exchange will continue to account for the number of SQF interfaces in order that member organizations are not assessed port fees for use of the prior version of the interface (SQF 5.0) while transitioning to (and paying for) the new version (SQF 6.0).[7]

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.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] 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 assessing fees at the aforementioned rates is equitable because the fee would be applied equally to all members. The Exchange also believes that the proposal is reasonable because through the transition period the Exchange is proposing a Cap to ensure members are not burdened by proposed tiered schedule of fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and paragraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–181 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–2010–181. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–181 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33267 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63617; File No. SR–BX–2010–092]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for the NASDAQ OMX BX Equities System

December 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[5] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

[6] *See* Amendment No. 1 (adding the preceding two sentences).

[7] *See* Securities Exchange Act Release No. 63145 (October 21, 2010), 75 FR 66168 (October 21, 2010) (SR–Phlx–2010–143) (a proposal to amend the Active SQF Port Fee so that member organizations are not assessed a fee for use of SQF 5.0 active ports to the extent the member is paying for the same (or greater) number of SQF 6.0 active ports).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2010, NASDAQ OMX BX, Inc. ("BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on January 3, 2011. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify its fees for trades that execute at prices at or above $1. BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.,* quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity. Since BX introduced this pricing model in 2009, several other exchanges have emulated it, including the EDGX Exchange, the BATS–Y Exchange, and the CBOE Stock Exchange ("CBSX").

Effective November 1, 2010, BX increased the rebate for accessing liquidity to $0.0002 per share executed and introduced a tiered pricing structure for the fee to add liquidity, under which members adding a daily average of more than 50 million shares of liquidity during a month are charged $0.00025 per share executed, while members adding a daily average of 50 million or fewer shares during the month are charged $0.0004 per share executed. Effective January 3, 2011, BX will revert to non-tiered pricing structure, but will make significant changes to the levels of its rebate for accessing liquidity and its charge for liquidity provision. Specifically, for all market participants, the fee to add liquidity will be $0.0018 per share executed, and the rebate for accessing liquidity will be $0.0014 per share executed. The fee changes are reflective of the ongoing intense level of competition for order flow in the cash equities markets, and specifically among exchanges that provide rebates to market participants accessing liquidity.[3]

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on BX and other venues, and the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity). Although the change increases the fee for orders that provide liquidity, it provides an offsetting increase in the rebate for orders accessing liquidity. As a result of the change, BX's fees and rebates for stocks priced above $1 will match those that have been in effect on a competing venue for several months.[6]

BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. BX believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to BX.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to BX's competitors if they believe that competitors offer more favorable pricing. The change is a direct competitive response to fee changes implemented at one of BX's competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Securities Exchange Act Release No. 63160 (October 22, 2010), 75 FR 66817 (October 29, 2010) (SR–CBOE–2010–093) (adopting fees identical to the fees proposed in this filing).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] *See supra* n.3.

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–092 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33257 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63618; File No. SR–NYSE–2010–85]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or August 1, 2011

December 29, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2011, until the earlier of Securities and Exchange Commission ("SEC" or "Commission") approval to make such pilot permanent or August 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot ("NMM Pilot"),[3] currently scheduled to expire on January 31, 2011, until the earlier of Securities and Exchange Commission approval to make such pilot permanent or August 1, 2011.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC.[4]

Background [5]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[6] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[7] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[8]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is

[3] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46); *See also* Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR–NYSE–2009–113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR–NYSE–2010–25) (extending Pilot to September 30, 2010); and 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending Pilot to January 31, 2011).

[4] *See* SR–NYSE Amex–2010–122.

[5] The information contained herein is a summary of the NMM Pilot. *See supra* note 1 [sic] for a fuller description.

[6] *See* NYSE Rule 103.

[7] *See* NYSE Rule 104.

[8] *See* NYSE Rule 60; *see also* NYSE Rules 104 and 1000.

willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").[9] CCS provides the Display Book ® [10] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer ("BBO"). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority[11] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on four occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.[12] The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2011.

Proposal To Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until August 1, 2011, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–85 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–NYSE–2010–85. 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

[9] *See* NYSE Rule 1000.

[10] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[11] *See* NYSE Rule 72(a)(ii).

[12] *See supra* note 1 [sic].

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.[15] 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–NYSE–2010–85 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–33258 Filed 1–4–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12427 and #12428]

Arizona Disaster #AZ–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arizona (FEMA–1950–DR), dated 12/21/2010.

Incident: Severe Storms and Flooding.

Incident Period: 10/03/2010 through 10/06/2010.

Effective Date: 12/21/2010.

Physical Loan Application Deadline Date: 02/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 09/21/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/21/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: The Sovereign Tribal Nation of the Havasupai Tribe Within Coconino County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12427B and for economic injury is 12428B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–33274 Filed 1–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12429 and #12430]

Vermont Disaster #VT–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–1951–DR), dated 12/22/2010.

Incident: Severe Storm.

Incident Period: 12/01/2010 through 12/05/2010.

Effective Date: 12/22/2010.

Physical Loan Application Deadline Date: 02/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 09/22/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/22/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chittenden, Franklin, Lamoille.

The Interest Rates are:

For Physical Damage:

Non-Profit Organizations With Credit Available Elsewhere: 3.250.

Non-Profit Organizations Without Credit Available Elsewhere: 3.000.

For Economic Injury:

Non-Profit Organizations Without Credit Available Elsewhere: 3.000.

The number assigned to this disaster for physical damage is 12429B and for economic injury is 12430B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–33275 Filed 1–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0335]

Escalate Capital Partners SBIC I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners, SBIC I, L.P., 300 W. 6th Street, Suite 2250, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Escalate Capital Partners, SBIC I, L.P. proposes to provide debt security financing to LDR Holding Corporation, 4030 West Braker Lane, Suite 360, Austin, TX 78759. The financing is contemplated to provide capital for operations and expansion.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because AV–EC Partners I, L.P., an Associate of Escalate Capital

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[16] 17 CFR 200.30–3(a)(12).

Partners, SBIC I, L.P., owns more than ten percent of LDR Holding Corporation. Therefore, this transaction is considered a financing of an Associate requiring an exemption.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 29, 2010.

Sean Greene,

Associate Administrator for Investment.

[FR Doc. 2010–33276 Filed 1–4–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7286]

Notice of Receipt of Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States

Notice is hereby given that the Department of State received on May 14, 2010 an updated application from Dome Petroleum Corp., a North Dakota corporation ("Dome Petroleum"), with its registered office at 30600 Telegraph Road, Bingham Farms, Michigan 48025, and its principal offices at 240n 4th Avenue, SW., Calgary, Alberta, Canada T2P 2H8, for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to operate and maintain six (6) cross-border pipelines Dome Petroleum acquired from Dome Pipeline Corporation ("Dome Pipeline"). These pipelines carry, or are permitted to carry, liquefied hydrocarbons under pressure between the United States and Canada. The pipelines cross from the City of Sarnia in Canada to the United States underneath the St. Clair River, terminating on the American shore in the City of Marysville, Michigan at a property commonly known as Tax Parcel No. 74–03–032–2002–000, and also underneath the adjacent River Road.

According to the application, on March 15, 2007, Dome Pipeline was sold to Kinder Morgan Energy Partners LP, a master limited partnership with its principal office in Houston, Texas, by Dome Petroleum, the former parent corporation of Dome Pipeline. The application states that the sale was a stock sale, with the provision that some of the assets held by Dome Pipeline were to be transferred back to its former parent Dome Petroleum, and that, under the terms of the sale, the ownership of the pipelines which are the subject of this Application, and any related permits, easements, licenses and leases, were transferred back to Dome Petroleum.

Because of the transfer of ownership of the pipelines and related real properties, leases, licenses, easements and permits, Dome Petroleum now seeks to have new permits issued in its name to reflect the transfer of ownership of the pipelines and permission to operate, maintain and repair these pipelines underneath the St. Clair River.

The present Application would supersede an authorization to cross the border granted by President Woodrow Wilson on June 10, 1918 with regard to permit No. 88253/18 granted by the Secretary of War on June 8, 1918 for two pipelines (discussed below—Two Pipelines). It would also cover four additional pipelines permitted from the U.S. Army Corps of Engineers (discussed below—Four Pipelines).

Existing Permit No. 88253/18—Two Pipelines

A permit for two pipelines to cross the international border was issued by the U.S. Secretary of War to the Imperial Pipe Line Company on June 8, 1918. According to records provided with the application, the Imperial Pipeline Company assigned its pipeline permit rights to the Transit and Storage Company on December 28, 1936 and the Transit and Storage Company was acquired by Buckeye Pipe Line Company in 1953. The records also appear to show that Buckeye Pipe Line sold these pipelines to Dome Pipeline Corporation on June 28, 1971. The records provided to the Department with the application also include a letter from the Office of the Legal Adviser at the U.S. State Department dated June 1, 1971, acknowledging notice of the sale to Dome Petroleum and not objecting to the sale/purchase of the two pipelines.

The existing permit allows these pipelines to transport crude oil. However, according to the application, the pipelines are not actively carrying product currently, but rather are being held in reserve to be used in the event of an increase in demand or as backup to the active pipelines operated under Permit 73–12–19 (discussed below). The application states that the pipelines are not abandoned but are maintained under pressure with an inert gas, and continue to receive cathodic protection to protect against corrosion.

Existing Permit No. 73–12–19—Four Pipelines

On October 16, 1973, Dome Pipeline Corporation received Permit No. 73–12–19 from the U.S. Army Corps of Engineers (COE) to construct up to four (4) additional pipelines to carry liquefied hydrocarbons. According to the application, all four (4) pipelines were constructed prior to the December 31, 1976 deadline set forth in Permit 73–12–19. The application goes on to state, however, that only two of these pipelines currently actively transport liquefied hydrocarbons under pressure and that the remaining two pipelines are being held in reserve to be used in the event of an increase in demand or alternate method of transporting product is required. The application asserts that the latter two pipelines are not abandoned but rather are maintained under pressure with an inert gas, and continue to receive cathodic protection to protect against corrosion.

According to the **Federal Register** notice issued on May 31, 2005, transferee entities are required to submit applications for new permits that contain "information explaining the nature of the entity, its ownership, its place of incorporation or organization, information concerning its acquisition of relevant facility, bridge or border crossing from the prior permit holder and any other relevant information concerning its operation of the facility, bridge or border crossing." (70 FR 30990). In addition, the notice provides that, if the "transferee commits to abiding by the relevant terms and conditions of the previously-issued permit and further indicates that the operations of the relevant facility, bridge or border crossing will remain essentially unchanged from that previously permitted, the Department of State, pursuant to 22 CFR 161 .7(b)(3), does not intend to conduct an environmental review of the application under its regulations implementing the National Environmental Policy Act, 22 CFR part 161, unless information is brought to its attention in connection with the application process that the transfer potentially would have a significant impact on the quality of the human environment."

According to the application, Dome Petroleum has, in written correspondence to the Department of State, committed to abide by the relevant terms and conditions of the permits previously issued to Dome Pipeline or its predecessors-in-interest with regard to these six (6) pipelines. Further, Dome Petroleum has indicated in correspondence that there have been

no substantial changes in the operations of all six (6) pipelines than those originally authorized and further stated that the future operation of the pipelines will remain essentially unchanged from that previously permitted. Therefore, in accordance with 22 CFR 161.7(b)(3) and the Department's Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation (70 FR 30990, May 31, 2005), the Department of State does not intend to conduct an environmental review of the application unless information is brought to its attention that the transfer potentially would have a significant impact on the quality of the human environment.

As required by E.O. 13337, the Department of State is circulating this application to concerned Federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this application on or before February 4, 2011 to Michael P. Stewart, Office of International Energy and Commodity Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by e-mail at *StewartMP@State.gov.* The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: For information regarding environmental concerns and permitting, contact Alex Yuan at (202) 647–4284; or by e-mail at *YuanAW@State.gov.* For all other concerns, contact Michael P. Stewart, Office of International Energy and Commodity Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by e-mail at *StewartMP@State.gov.*

Dated: December 29, 2010.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. 2010–33297 Filed 1–4–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, January 20, 2011, starting at 1:30 p.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference is to review the structure of the COMSTAC Working Groups. The Committee will examine the current Working Groups and discuss whether it should make changes to the current structure. If changes are necessary, what should they be?

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by January 14, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the January 20, 2011, teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 325, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, December 29, 2010.

James B. Duffy,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010–33301 Filed 1–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0180]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a Federal Register Notice with a 60-day public comment period on this information collection on September 7, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 4, 2011.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0180.

FOR FURTHER INFORMATION CONTACT: Kathleen Bergeron, (202) 366–5508, Office of Infrastructure, Federal Highway Administration, Department of Transportation, 1200 New Jersey

Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highways for LIFE Omnibus Survey for Technology Deployment.

Background: The Highways for LIFE program was established by the 109th Congress within Sections 1101 and 1502 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59). Within that law, under the topic "Technology Transfer and Information Dissemination," it states that "The Secretary shall conduct a highways for life technology transfer program." It further states that "The Secretary shall establish a process for stakeholder input and involvement in the development, implementation, and evaluation of the Highways for LIFE Pilot Program. The process may include participation by representatives of the State departments of transportation and other interested persons." Also, it states that, "The Secretary shall monitor and evaluate the effectiveness of any activity carried out under this section."

A critical element in accomplishing these goals is to ensure that the technologies being deployed by FHWA and implemented by the States actually fill a specific need. Therefore, it is important that FHWA obtain feedback both before and after specific technologies are transferred. If, for example, FHWA determined on its own that a particular innovation was important, yet never actually determined whether States would value such an innovation, much time and money would have been wasted. Or, if there were an innovation that was deployed to States, yet FHWA never followed up to determine if the effort was a success, or how it might be even more successful, lessons could not be learned and put into effect.

In FHWA's Strategic Plan, the first goal listed is "National Leadership." Under that topic, the first objective is "Advance Innovation: FHWA is recognized as a leader in the development and promotion of innovative solutions that address current and emerging transportation issues." Item 1.1 is "Systematically identify emerging issues and needs that could impact transportation," and item 1.2 is "Identify, develop, promote, and rapidly implement new and proven technologies and innovative solutions to improve system performance." These "innovative solutions" cannot properly identify what might work without discussing the needs for such things with the user groups—the States. Likewise, it cannot promote and implement them without an appropriate understanding of how the user organizations—the States—feel about the particular innovations; and this can only come from a formal survey.

Respondents: There are 260 respondents, including 5 each from 50 State Transportation Departments, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Once a year, for three years.

Estimated Average Burden per Response: Each survey will require 15 minutes to respond.

Estimated Total Annual Burden Hours: 65 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 29, 2010.

Cynthia Thornton,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–33286 Filed 1–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0177]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a Federal Register Notice with a 60-day public comment period on this information collection on September 7, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 4, 2011.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0177.

FOR FURTHER INFORMATION CONTACT: Karen White, (202) 366–9474, Office of Innovative Program Delivery. Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Experiments on Driving under Uncertain Congestion Conditions and the Effects on Traffic Networks from Congestion Pricing Initiatives.

Background: The traditional way of financing the transportation system in the U.S. is currently being challenged and new revenue schemes are being evaluated for possible implementation. In addition, the growth in traffic volume overwhelms the ability to finance additional road capacity. Congestion pricing is gaining support across the world as a way to solve the congestion problem and thereby ease the congestion cost to the public and at the same time generate revenues that can be used to fund additional transportation capacity. While congestion pricing strategies have been implemented in several parts of the world, the implementation is still relatively limited in this country.

This study will assess the responses to several congestion pricing schemes by asking volunteer participants to make driving choices under these schemes in an experiment. The study will present participants with a number of choice

situations involving routes that vary in road pricing and travel time. Three basic types of experiments will be conducted: A field experiment using Global Positioning System (GPS) trackers; a multi-driver traffic simulation experiment; and a single driver simulator experiment. In addition to these experiments, participants will answer short demographic questionnaires and short surveys of their driving habits.

The initial phase will consist of recruiting participants by sending out invitation letters to potential participants who are drivers on select routes in the Miami, Florida; Orlando, Florida; and Atlanta, Georgia metropolitan areas. Local toll road agencies have agreed to collaborate with the researchers in this phase. The invitation will ask those who are interested to complete a survey online. This survey is used to filter respondents based on how frequently they drive on the selected routes. A typical respondent will complete this survey in 30 minutes. Respondents who express interest in being part of the experiments will be asked to attend four face-to-face sessions. There will be a choice of times and locations for these sessions so as to make it convenient for the participant. In these sessions participants will be presented with lottery choices, betting tasks, and simulator driving tasks, in addition to a short questionnaire about their demographics and driving habits. These tasks are intended to observe characteristics in drivers that are important to their driving choices when roads are congested. The choice tasks, questionnaires and simulator driving tasks will require 4½ hours of the participant's time, spread over the four sessions. In addition, all participants' cars will be outfitted with a GPS device that can receive but not send signals, allowing us to collect information on driving habits. The installation is simple and will only take a couple of minutes. All driving data will be downloaded directly from the device to a computer. Sensitive data, such as the home and work locations of the drivers, will not be downloaded. Approximately two weeks will pass between each session; a time frame that is determined by the capacity of the GPS device's ability to store data of subjects' travel log. The total time required for instructing participants in the field driving task, installing the device, and downloading all the data will be one hour, spread out over the four sessions. All of the 1,200 participants will have their car equipped with a GPS while participating in the study. However, since we partition the study into three parts there will be a maximum of 400 cars that have GPS installed at any time in the field experiment.

During the first two sessions participants will be given driving simulator tasks, lottery and betting tasks, and questionnaires. Participants will receive money for driving on the routes studied but tolls that vary across routes and departure times will be subtracted from this money. If a toll from the study is applied to a route that already has a toll, the existing toll is subtracted from the toll charge in the study. If the existing toll is higher than the toll charge in the study, the participant will be paid the difference from the study. Some routes will have no toll charge. Participants will also receive money in a similar manner for driving in the simulators, and for the non-simulator choice tasks. There will also be a fixed compensation for attending each of the four sessions, and for completing the entire study.

A total of 1,200 persons will participate, divided across the three regions. 10 weeks will be needed to complete the 4 sessions for each group of participants. 100 of these participants will be expected to volunteer for an additional 10 week field driving period for additional monetary compensation. The sessions will be timed very carefully since the student research assistants helping the participants will not be available during final exam periods and certain breaks.

Respondents: 1200 participants are expected to participate throughout all tasks.

Frequency: In phase 1, a survey will be completed via the internet, followed by four face-to-face sessions and three two-week periods of driving with a GPS devise for most participants and twice that for a few selected participants. The face-to-face sessions will take place within a 10-week period. For those who are selected to double their participation there will be a break before starting the second period.

Estimated Average Burden per Response: The online questionnaire will require 30 minutes for a typical respondent. Two of the face-to-face sessions will last two hours each, the third session will last one hour, and the final session will be completed in thirty minutes. This time covers the 4½ hours for the simulator tasks, the other choice tasks, and questionnaires, and the one hour for installing the GPS device, instructing participants in the field driving task plus downloading the GPS data to a computer. The average time allocation per participant is therefore expected to be 6 hours. For those who choose to double their participation there will be a need for an additional two hours spread across four sessions.

Estimated Total Burden Hours: Approximately 7,600 hours.

6 hours × 1200 participants = 7200

2 hours × 200 participants = 400

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 29, 2010.

Cynthia Thornton,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–33294 Filed 1–4–11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0455]

Proposed Information Collection (Equal Opportunity Compliance Review Report) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether proprietary education institutions receiving Federal financial assistance comply with the applicable civil rights law and regulations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 7, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0455" in any

correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Equal Opportunity Compliance Review Report, VA Form 20–8734 and Supplement to Equal Opportunity Compliance Review Report, VA Form 20–8734a.

OMB Control Number: 2900–0455.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, delegated authority to the Attorney General to coordinate the implementation and enforcement by Executive agencies of various equal opportunity laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance. The Order extended the delegation to cover Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Department of Justice issued government-wide guidelines (29 CFR 42.406) instructing funding agencies to provide for the collection of data and information from applicants for and recipients of Federal assistance.

VA Forms 20–8734 and 20–8734a are used by VA personnel during regularly scheduled educational compliance survey visits, as well as during investigations of equal opportunity complaints, to identify areas where there may be disparate treatment of members of protected groups. VA Form 20–8734 is used to gather information from post-secondary proprietary schools below college level. The information is used to assure that VA-funded programs comply with equal opportunity laws. VA Form 20–8734a is used to gather information from students and instructors at post-secondary proprietary schools below college level. The information is used to assure that participants have equal access to equal treatment in VA-funded programs. If this information were not collected, VA would be unable to carry out the civil rights enforcement responsibilities established in the Department of Justice's guidelines and VA's regulations.

Affected Public: Business or other for-profit.

Estimated Annual Burden and Average Burden Per Respondent: Based on past experience, VBA estimates that 76 interviews will be conducted with recipients using VA Form 20–8734 at an average of 1 hour and 45 minutes per interview (133 hours). This includes one hour for an interview with the principal facility official, plus 45 minutes for reviewing records and reports and touring the facility. It is estimated that 76 interviews will be conducted with students using VA Form 20–8734a at an average of 30 minutes per interview (38 hours) and with instructors at an average of 30 minutes per interview (38 hours). Interviews are also conducted with 76 students without instructors at an average time of 30 minutes (38 hours). The total burden hour is 247.

Frequency of Response: On occasion.

Estimated Number of Respondents: 228.

Dated: December 30, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–33288 Filed 1–4–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0476)]

Proposed Information Collection (Patient Satisfaction Survey Michael E. DeBakey Home Care Program) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 4, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0476)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–New (VA Form 10–0476)."

SUPPLEMENTARY INFORMATION:

Title: Patient Satisfaction Survey Michael E. DeBakey Home Care Program, VA Form 10–0476.

OMB Control Number: 2900–New (VA Form 10–0476).

Type of Review: New collection.

Abstract: VA Form 10–0476 will be used to gather feedback from patients regarding their satisfaction with the quality of services/care provided by home care program staff.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2010, at page 62635.

Estimated Annual Burden: 17 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 100.

Dated: December 30, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–33289 Filed 1–4–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VA Form 10–0507)]

Proposed Information Collection (Veterans Health Benefits Handbook Satisfaction Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 4, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0507)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900—New (VA Form 10–0507)."

SUPPLEMENTARY INFORMATION:

Title: Veterans Health Benefits Handbook Satisfaction Survey, VA Form 10–0507.

OMB Control Number: 2900—New (VA Form 10–0507).

Type of Review: New collection.

Abstract: VA Form 10–0507 will be used to request feedback from veterans on the content and presentation material contained in the Veterans Health Benefits Handbook. VA will use the data collected to determine how well the handbook meets veterans' individual needs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2010, at page 62636.

Affected Public: Individuals and Households.

Estimated Annual Burden: 135 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,622.

Dated: December 30, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–33290 Filed 1–4–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Center for Medicare & Medicaid Services

42 CFR Part 413
Medicare Program; End-Stage Renal Disease Quality Incentive Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–3206–F]

RIN 0938–AP91

Medicare Program; End-Stage Renal Disease Quality Incentive Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will implement a quality incentive program (QIP) for Medicare outpatient end-stage renal disease (ESRD) dialysis providers and facilities with payment consequences beginning January 1, 2012, in accordance with section 1881(h) of the Act (added on July 15, 2008 by section 153(c) of the Medicare Improvements for Patients and Providers Act (MIPPA)). Under the ESRD QIP, ESRD payments made to dialysis providers and facilities under section 1881(b)(14) of the Social Security Act will be reduced by up to two percent if the providers/facilities fail to meet or exceed a total performance score with respect to performance standards established with respect to certain specified measures.

DATES: These regulations are effective on February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Shannon Kerr, (410) 786–3039.

SUPPLEMENTARY INFORMATION:

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

CIP Core Indicators Project
CMS Centers for Medicare & Medicaid Services
CPM Clinical performance measure
CROWNWeb Consolidated Renal Operations in a Web-Enabled Network
DFC Dialysis Facility Compare
DFR Dialysis Facility Report
ESA Erythropoiesis-stimulating agent
ESRD End-stage renal disease
FDA Food and Drug Administration
Kt/V A measure of dialysis adequacy where K is dialyzer clearance, t is dialysis time, and V is total body water volume
LDO Large dialysis organization
MIPPA Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275)
NQF National Quality Forum
PPS Prospective payment system
QIP Quality incentive program
REMIS Renal management information system
RFA Regulatory Flexibility Act
SIMS Standard information management system
SSA Social Security Administration
the Act Social Security Act
URR Urea reduction ratio

I. Background

A. Overview of Quality Monitoring Initiatives

For over 30 years, monitoring the quality of care provided to end-stage renal disease (ESRD) patients and provider/facility accountability have been important components of the Medicare ESRD payment system. In the proposed rule, we described the evolution of our ESRD quality monitoring initiatives by category: The ESRD Network Organization Program, the Clinical Performance Measures (CPM) Project, Dialysis Facility Compare (DFC), the ESRD Quality Initiative, the ESRD Conditions for Coverage, and CROWNWeb (75 FR 49216–49217). Most recently, we finalized three quality measures that we will use for the initial year of the QIP (*see* "End-Stage Renal Disease Prospective Payment System final rule (referred to in this final rule as the "ESRD PPS final rule"), which appeared in the **Federal Register** on August 12, 2010 (75 FR 49030, 49182–49190)). We also proposed to implement other components of the QIP in a notice of proposed rulemaking entitled "End-Stage Renal Disease Quality Incentive Program" proposed rule, which appeared in the **Federal Register** on August 12, 2010 (75 FR 49215–49232). We received and reviewed many helpful comments regarding the design of the QIP that contributed to the development of this ESRD QIP final rule.

We view the ESRD QIP, required by section 1881(h) of the Social Security Act (the Act), as the next step in the evolution of the ESRD quality program that began more than three decades ago. Our vision is to implement a robust, comprehensive ESRD QIP that builds on the foundation that has already been established.

B. Statutory Authority for the ESRD QIP

Congress required in section 153 of MIPPA that the Secretary implement an ESRD quality incentive program (QIP). Specifically, section 1881(h) of the Act, as added by section 153(c) of MIPPA, requires the Secretary to develop a QIP that will result in payment reductions to providers of dialysis services and dialysis facilities that do not meet or exceed an established total performance score with respect to performance standards established for certain specified measures. As provided under this section, the payment reductions, which will be up to two percent of payments otherwise made to providers and facilities under section 1881(b)(14) of the Act, will apply to payment for renal dialysis services furnished on or after January 1, 2012. The total performance score that providers and facilities must meet or exceed in order to receive their full payment in 2012 will be based on a specific performance period prior to this date. Under section 1881(h)(1)(C) of the Act, the payment reduction will only apply with respect to the year involved for a provider/facility and will not be taken into account when computing future payment rates for the impacted provider/facility.

For the ESRD QIP, section 1881(h) of the Act generally requires the Secretary to: (1) Select measures; (2) establish the performance standards that apply to the individual measures; (3) specify a performance period with respect to a year; (4) develop a methodology for assessing the total performance of each provider and facility based on the performance standards established with respect to the measures for a performance period; and (5) apply an

appropriate payment reduction to providers and facilities that do not meet or exceed the established total performance score.

C. Finalized Anemia Management and Hemodialysis Adequacy Measures

In accordance with section 1881(h)(2)(A)(i) of the Act, we finalized in the ESRD PPS final rule the following three measures for the initial year of the ESRD QIP:

- Percentage of Medicare patients with an average Hemoglobin Less Than 10.0g/dL;
- Percentage of Medicare patients with an average Hemoglobin Greater Than 12.0g/dL;
- Percentage of Medicare hemodialysis patients with an average Urea Reduction Ratio (URR) > 65 percent.

(75 FR 49182). However, we received some questions on the measures during the public comment period for this rule and are, therefore, providing clarifying information in this final rule.

As we stated in the ESRD PPS final rule, pediatric patients (those < 18 years of age) will not be included in the final calculation of the anemia management measures (75 FR 49185). However, we want to emphasize that providers/facilities do not need to submit any new data on the measures we are using for the first year of the QIP. This population will be excluded from the final calculation of the measure during the first year (75 FR 49185).

We also want to reiterate that the patient population for the anemia management measures will include hemodialysis and peritoneal dialysis patients who are receiving ESAs. To be eligible for inclusion in the patient population for these measures, the patient must have four or more eligible claims from the provider/facility within the performance period. Data from patients whose first ESRD maintenance dialysis started less than 90 days after diagnosis or who have hemoglobin values of less than 5g/dL or greater than 20g/dL will be excluded from the calculation (75 FR 49182). Also, patients not receiving ESAs are excluded from these measures (75 FR 49184).

We would like to clarify that as we stated in the ESRD PPS final rule, the hemodialysis adequacy measure will be calculated as the percentage of patients with a URR greater than or equal to 65 percent (75 FR 49190).

Additionally, providers/facilities do not need to submit any additional data with respect to the measures for the first year of the ESRD QIP. We will calculate the measures using claims data, which we will collect, as we do for DFC, in accordance with the technical specifications outlined in the Dialysis Facility Reports, which can be accessed for reference at: *http://www.dialysisreports.org/Methodology.aspx*. For the hemodialysis adequacy measure, home hemodialysis patients and peritoneal dialysis patients, as well as pediatric patients, are excluded from the calculation (75 FR 49185).

We also note that the laboratory values we will use to calculate the three finalized measures are included on the Medicare ESRD claim form and, thus, are submitted by providers/facilities along with their claims. For guidance on how those values should be obtained and submitted, please *see* the Medicare Claims Processing Manual (Medicare Publication 100.04, Chapter 8—Outpatient ESRD Hospital, Independent Facility, and Physician/Supplier Claims, Section 50.3).

Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary, but shall not exceed three years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in the Notice of Proposed Rulemaking, entitled "End-Stage Renal Disease Quality Incentive Program", published on August 12, 2010 in the **Federal Register** (75 FR 49215 through 49232). In addition, this final rule has been published within the three-year time limit imposed by section 902 of the MMA. Therefore, we believe that this final rule is being published in accordance with the statutory requirements of section 902 to ensure the timely publication of final regulations.

II. Provisions of the Proposed Regulations

On August 12, 2010, we published in the **Federal Register** a proposed rule entitled "Medicare Program; End-Stage Renal Disease Quality Incentive Program" (75 FR 49215). In that proposed rule, we proposed that under the ESRD QIP, ESRD payments for facilities/providers would be reduced by up to two percent if they failed to meet or exceed the total performance score for performance standards established with respect to certain quality measures. As stated above, the three quality measures we will use for payment consequence year 2012 are Hemoglobin Less Than 10.0g/dL, Hemoglobin More Than 12.0g/dL and Hemodialysis Adequacy ≥ 65 percent (URR). As detailed below, we received numerous comments on the various portions of the proposed rule, which we analyze and respond to below. After consideration of these comments and responses, we are finalizing the ESRD QIP as proposed.

III. Analysis of and Responses to Public Comments

The proposed rule was published on August 12, 2010 (75 FR 49215 through 49232) in the **Federal Register** with a comment period that ended on September 24, 2010. We received approximately 71 public comments. Interested parties that submitted comments included dialysis facilities, the national organizations representing dialysis facilities, nephrologists, nurses, nutritionists, home health agencies, the major chain dialysis facilities, clinical laboratories, pharmaceutical manufacturers, hospitals and their representatives, individual dialysis patients, advocacy groups, and the Medicare Payment Advisory Commission (MedPAC). In this final rule, we provide a summary of each proposed provision, a summary of the public comments received, our responses, and any changes to the proposed ESRD QIP contained in this final rule.

A. Performance Standards for the ESRD QIP Measures

Section 1881(h)(4)(A) of the Act requires the Secretary to establish performance standards with respect to the measures selected for the QIP for a performance period with respect to a year. Section 1881(h)(4)(B) of the Act provides that the performance standards shall include levels of achievement and improvement, as determined appropriate by the Secretary. However, for the first performance period, we proposed to use for the three selected measures the performance standard required by the special rule in section 1881(h)(4)(E) of the Act. Under this provision, the Secretary is required to "initially use", as a performance standard, the lesser of a provider/facility-specific performance rate in the year selected by the Secretary under the second sentence of section

1881(b)(14)(A)(ii) of the Act, or a standard based on the national performance rates for such measures in a period determined by the Secretary. We did not propose to include in this initial performance standard levels of achievement or improvement because we do not believe that section 1881(h)(4)(E) of the Act requires that we include such levels. In addition, we interpret the term "initially" to apply only to the performance period applicable for payment consequence calendar year 2012. For subsequent performance periods, we will propose performance standards under section 1881(h)(4)(A) of the Act.

As stated above, to implement the special rule for the anemia management and hemodialysis adequacy measures, we proposed to use as the performance standard the lesser of the performance of a provider or facility on each measure during 2007 (the year selected by the Secretary under the second sentence of section 1881(b)(14)(A)(ii) of the Act, referred to as the base utilization year), or the national performance rates of all providers/facilities for each measure in 2008.

In setting the performance standard based on national performance rates, we proposed to adopt a standard that is equal to the national performance rates of all dialysis providers and facilities based on 2008 data as calculated and reported on the Dialysis Facility Compare (DFC) Web site. We proposed to use 2008 data because it is the most recent year for which data is publicly available prior to the beginning of the proposed performance period. Specifically, the national performance rates for the anemia management and hemodialysis adequacy measures were posted on DFC in November 2009, as follows:

- For the anemia management measure (referred to in this final rule as the "Hemoglobin Less Than 10g/dL Measure")—the percentage of Medicare patients who have an average hemoglobin value less than 10.0g/dL: the national performance rate is two percent.
- For the anemia management measure (referred to in this final rule as the "Hemoglobin Greater Than 12g/dL Measure")—the percentage of Medicare patients who have an average hemoglobin value greater than 12.0g/dL: the national performance rate is 26 percent.
- For the proposed hemodialysis adequacy measure (referred to in this final rule as "Hemodialysis Adequacy Measure")—the percentage of Medicare patients who have an average URR level greater than or equal to 65 percent: the national performance rate is 96 percent.

For purposes of implementing the special rule, we proposed that the performance standard for each of the three measures for the initial performance period with respect to payment consequence year 2012 would be the lesser of (1) the provider/facility-specific rate for each of these measures in 2007, or (2) the 2008 national performance rates for each of these measures.

We received several comments on our proposed selection of performance standards. Summaries of the comments received and our responses are set forth below.

Comment: Several commenters objected to setting the performance standards based on previous provider/facility performance in 2007 and 2008 because they believe that those years provide an inaccurate picture of the quality of care furnished to ESRD patients today. Specifically, these commenters noted that changes have been made since 2007 in anemia management clinical practice and suggested that CMS set the initial performance standards based on more current data, such as data from 2009.

Response: As stated above, under section 1881(h)(4)(E) of the Act, the Secretary is required to "initially use" as a performance standard the lesser of a provider/facility-specific performance rate in the year selected by the Secretary under the second sentence of section 1881(b)(14)(A)(ii) of the Act, or a standard based on the national performance rate for each measure in a period determined by the Secretary. In the ESRD PPS final rule we determined that 2007 was the year representing the lowest per-patient utilization of the renal dialysis services which comprise the ESRD payment bundle as required by section 1881(b)(14)(A)(ii) of the Act. (75 FR 49065). Therefore, in accordance with section 1881(h)(4)(E)(i), we must use the 2007 provider/facility performance rates.

In setting the performance standard based on national performance rates under section 1881(h)(4)(E)(ii), we sought to balance the importance of using the most recent available data with the desire to use data that was publicly available at the time we issued the proposed rule. At the time we issued the proposed rule, the most recent national performance rate data that was publicly available on DFC was from 2008.

We agree with the commenters that the initial performance standard should be based on the most contemporary data and as close to the performance period as possible. However, we also believe that it is important for providers/facilities, beneficiaries and the public to know exactly what the performance standards are as soon as possible.

Comment: One commenter noted that the proposed initial performance standard based on the 2008 national performance rate of two percent for the Hemoglobin Less Than 10g/dL measure would be extremely difficult for providers/facilities to meet and would likely lead to overuse of ESAs. The commenter noted that the 2008 data reflects practices that were furnished prior to recent studies and FDA warnings regarding the danger of high hemoglobin levels, and that at the time, providers/facilities were unaware of the danger of high hemoglobin levels. Additionally, the commenter suggested setting the initial performance standards for the anemia management measures at 10 percent for Hemoglobin Less than 10g/dL and Hemoglobin Greater than 12g/dL.

Response: We disagree with the commenter's suggestion that the anemia management measures performance standards should be set at 10 percent. We have made providers/facilities aware of the dangers of high hemoglobin levels related to use of ESAs since as early as 2005, when we changed our policy regarding ESAs and the monitoring of high hemoglobin levels (*see* CMS Manual System, Pub 100–04 Medicare Claims Processing, Transmittal 751 (November 10, 2005)). Since that time and with the release of the FDA guidelines in 2008, the historical data demonstrate that the number of patients with high hemoglobin levels has decreased and the number of patients with Hemoglobin Less than 10 g/dL has not increased. We believe that lowering the standard to 10 percent does not move quality forward.

We also believe that most providers/facilities are capable of meeting the initial 2 percent performance standard, and note that the 2008 national performance rates for the anemia management measures will only be used as the initial performance standard for those providers/facilities whose 2007 specific rates are lower than these national performance rates. For providers/facilities that had 2007 specific rates that were higher than the 2008 national performance rates their specific performance rates will be used as the initial performance standard. We also note that analysis of historical data for all three measures shows improvements in the average provider/facility performance of each measure, and therefore more facilities should receive maximum performance scores

for these measures in future years of the ESRD QIP.

Comment: One commenter requested that the initial performance standard for the hemodialysis adequacy measure be recalculated to reflect that home hemodialysis patients are excluded from the measure.

Response: As stated in the ESRD PPS final rule (75 FR 49186), home hemodialysis patients are not part of the measure population for the hemodialysis adequacy measure for purposes of the ESRD QIP. Therefore, home hemodialysis patients will not be included in the measure calculation.

After consideration of the public comments, we are finalizing the performance standards as proposed.

B. Performance Period for the ESRD QIP Measures

Section 1881(h)(4)(D) of the Act requires the Secretary to establish a performance period with respect to a year, and for that performance period to occur prior to the beginning of such year. Because we are required under section 1881(h)(1)(A) of the Act to implement the payment reduction beginning with renal dialysis services furnished on or after January 1, 2012, the first performance period would need to occur prior to that date.

We proposed to select all of CY 2010 as the initial performance period for the three finalized measures (42 FR 49218). We believe that this is the performance period that best balances the need to collect sufficient data, analyze the data, calculate the provider/facility-specific total performance scores, determine whether providers and facilities meet the performance standards, prepare the pricing files needed to implement applicable payment reductions beginning on January 1, 2012, and allow providers and facilities time to preview their performance scores and inquire about their scores prior to finalizing their scores and making performance data public (75 FR 49218). We requested public comments about the selection of CY 2010 as the initial performance period.

The comments we received on this proposal and our responses are set forth below.

Comment: Many commenters suggested that calendar year 2010 should not be selected as the performance period. Some commenters suggested that the QIP was created to ensure that patient outcomes are not negatively affected as an unintended consequence of the new prospective payment system for ESRD care, and for that reason, they believe that the initial performance period should be calendar year (CY) 2011, when the new prospective payment system for ESRD care is effective, rather than CY 2010. Recognizing the time constraints that CMS is under with respect to the use of data from a performance period, one commenter suggested that CMS select the first half of 2011 as the performance period and conduct data processing during the final six months of 2011, if this final rule is published in 2010.

Response: Although an important goal of the ESRD QIP is to assess whether patient outcomes are negatively affected as a result of the new ESRD PPS, the primary purpose of the QIP is to incentivize providers/facilities to continuously improve their performance in the care of ESRD patients. In addition to the reasons we gave for selecting CY 2010 as the performance period in the proposed rule (42 FR 49218–19), we believe that selecting CY 2010 as the initial performance period will enable us to do two things: (1) Determine the first set of performance scores prior to the change in the ESRD payment system which, as indicated, may affect provider/facility practice especially as it relates to medication management, laboratory testing and other patient management practices that now come under the bundled payment; and (2) use this first set of performance scores to evaluate whether the new ESRD PPS has created positive or negative consequences. We also believe that using all of CY 2010 as the initial performance period will provide us with a more complete picture of provider and facility performance than we would get if we set a six month performance period, which will enable us to conduct a more robust evaluation of provider/facility performance. We also plan to implement a monitoring program in 2011 for the purpose of tracking the impact of the new ESRD PPS and observing any changes to access to and quality of care for beneficiaries.

Comment: Other commenters stated that using CY 2010 as the initial performance period would not serve as an incentive because dialysis providers and facilities would be judged on outcomes based on care provided to patients before the performance standards were established. Commenters also observed that data used for the QIP score will be over a year old by the time providers/facilities receive payments affected by that data.

Response: We agree that it is important to use up-to-date quality data for the ESRD QIP, which is why we are working on the feasibility of using such data in future years. Currently, claims are the most complete data source for the selected measures, but we need a sufficient time period to collect and analyze the data before we can use it to make payment determinations. For this reason, we do not believe that we can select a performance period more recent than CY 2010 for the initial year of the ESRD QIP. As other data sources or accurate and reliable methodologies for faster analysis of claims data become available, we will seek to use those resources to reduce the gap between the performance period and payment implementation.

Comment: Several commenters objected to the proposed 2010 performance period, claiming that CMS should have established the performance standards (by issuing this final rule) by the end of 2009 if it wanted to set 2010 as the performance period. Specifically, commenters reference section 1881(h)(4)(C), which requires the Secretary to "establish the performance standards * * * prior to the beginning of the performance period for the year involved."

Response: We acknowledge that section 1881(h)(4)(C) requires the Secretary to establish performance standards under subparagraph (A) prior to the beginning of the performance period for the year involved. However, we are establishing the performance standard that will affect ESRD payments in CY 2012 in accordance with section 1881(h)(4)(E), which does not impose the limitation suggested by the commenters. As we have stated, we believe that setting a CY 2010 performance period for the initial ESRD QIP will ensure that the performance scores are based on a robust set of data, and will allow us sufficient time to analyze that data, determine whether provider/facilities met the performance standards, implement the applicable payment reductions for CY 2012, and provide providers/facilities with an opportunity to preview their performance scores and submit related inquiries. For these reasons, we are finalizing calendar year 2010 as the performance period for the 2012 ESRD QIP.

After consideration of the public comments, we are finalizing the performance period as proposed.

C. Methodology for Calculating the Total Performance Score for the ESRD QIP Measures

Section 1881(h)(3)(A)(i) of the Act requires the Secretary to develop a methodology for assessing the total performance of each provider and facility based on the performance standards with respect to the measures selected for a performance period.

Section 1881(h)(3)(A)(iii) of the Act states that the scoring methodology must also include a process to weight the performance scores with respect to individual measures to reflect priorities for quality improvement, such as weighting scores to ensure that providers/facilities have strong incentives to meet or exceed anemia management and dialysis adequacy performance standards, as determined appropriate by the Secretary. In addition, section 1881(h)(3)(B) of the Act requires the Secretary to calculate separate performance scores for each measure. Finally, under section 1881(h)(3)(A)(ii) of the Act, for those providers and facilities that do not meet (or exceed) the total performance score, the Secretary is directed to ensure that the application of the scoring methodology results in an appropriate distribution of payment reductions to providers and facilities, with those achieving the lowest total performance scores receiving the largest reductions.

We proposed to calculate the total performance of each provider and facility with respect to the measures adopted for the initial performance period by assigning 10 points to each of the three measures (75 FR 49219). If a provider or facility meets or exceeds the performance standard for one measure, then it would receive 10 points for that measure. We proposed to award points on a 0 to 10 point scale, because this scale is commonly used in a variety of settings and is easily understood by stakeholders. We also believe that the scale provides sufficient variation to show meaningful differences in performance between providers/facilities.

We proposed that a provider or facility that does not meet or exceed the initial performance standard for a measure based on its CY 2010 data would receive fewer than 10 points for that measure, with the exact number of points corresponding to how far below the initial performance standard the provider/facility's actual performance falls (75 FR 49219). Specifically, we proposed to implement a scoring methodology that subtracts two points for every one percentage point the provider/facility performance falls below the initial performance standard. In the proposed rule, we discussed various examples of how this proposed methodology would work (75 FR 49219).

TABLE 1—PROPOSED SCORING METHODOLOGY FOR ANEMIA MANAGEMENT MEASURES USING NATIONAL PERFORMANCE RATES IN 2008 AS THE PERFORMANCE STANDARD FOR 2010 FACILITY-SPECIFIC COMPARISON

	Anemia management measures	
	Percentage of Medicare patients whose average hemoglobin levels are less than 10 g/dL	**Percentage of Medicare patients whose average hemoglobin levels are greater than 12 g/dL**
POINTS	**Percentage**	**Percentage**
10 points	**2 percent or less**	**26 percent or less**
8 points	3 percent	27 percent
6 points	4 percent	28 percent
4 points	5 percent	29 percent
2 points	6 percent	30 percent
0 point	7 percent or more	31 percent or more

Note that the bolded rows show the performance standard for the applicable measure.

TABLE 2—PROPOSED SCORING METHODOLOGY FOR ANEMIA MANAGEMENT MEASURES USING FACILITY-SPECIFIC RATES IN 2007 AS THE PERFORMANCE STANDARD AND 2010 FACILITY-SPECIFIC RATE FOR COMPARISON

	Anemia management measures	
	Percentage of Medicare patients whose average hemoglobin levels are less than 10 g/dL	**Percentage of Medicare patients whose average hemoglobin levels are greater than 12 g/dL**
POINTS	**Percentage**	**Percentage**
	4 percent (Example of a 2007 facility-specific score)	**30 percent (Example of a 2007 facility-specific score)**
10 points	4 percent or less	30 percent or less
8 points	5 percent	31 percent
6 points	6 percent	32 percent
4 points	7 percent	33 percent
2 points	8 percent	34 percent
0 points	9 percent or more	35 percent or more

TABLE 3—PROPOSED SCORING METHODOLOGY FOR HEMODIALYSIS ADEQUACY MEASURE USING NATIONAL PERFORMANCE RATES IN 2008 AS THE PERFORMANCE STANDARD FOR 2010 FACILITY-SPECIFIC COMPARISON

POINTS	Hemodialysis adequacy measure
	Percentage of Medicare patients whose average URR levels are greater than or equal to 65 percent
10 points	**96 percent or more**
8 points	95 percent
6 points	94 percent
4 points	93 percent
2 points	92 percent
0 points	91 percent or less

TABLE 4—PROPOSED SCORING METHODOLOGY FOR HEMODIALYSIS ADEQUACY MEASURE USING FACILITY-SPECIFIC RATES IN 2007 AS THE PERFORMANCE STANDARD AND 2010 FACILITY-SPECIFIC RATE FOR COMPARISON

POINTS	Hemodialysis adequacy measure
	Percentage of Medicare patients whose URR levels are greater than or equal to 65 percent
	92 Percent (Example of a 2007 facility-specific score)
10 points	92 percent or more
8 points	91 percent
6 points	90 percent
4 points	89 percent
2 points	88 percent
0 points	87 percent or less

We noted that our proposed methodology—subtracting two points for every one percentage point the provider or facility's performance falls below the performance standard—does not take into account the relative variability in performance associated with each measure. Despite the difference in variability in performance among the measures, we proposed to apply the straightforward methodology we described in the proposed rule (75 FR 49219) in a consistent manner across all three measures. We stated that in designing the scoring methodology for the first year, we wanted to adopt a clear-cut approach (subtracting two points for each percentage point providers and facilities fell below the performance standard) consistent with the conceptual model that we discussed in the End-Stage Renal Disease Prospective Payment System Proposed Rule (CMS–1418–P)(74 FR 50010). We requested public comment on our proposal to apply the score reductions in this manner, as opposed to a methodology which takes into account the relative variations in performance that exists for each measure.

We recognize that this straightforward approach may not be appropriate in future years of the ESRD QIP as we adopt new measures for inclusion in the program which may have a wider variability in performance. Moreover, we may need to reevaluate this approach depending on how providers and facilities perform in future years on the current measures. As we have stated, we want to ensure the performance measures included in the QIP will result in meaningful quality improvement for patients at both the national and individual facility/provider level. Therefore, we requested comment on potential methodologies that would take into account variations in performance amongst all measures included in the QIP.

In calculating the total performance score, section 1881(h)(3)(A)(iii) of the Act requires the agency to weight the performance scores with respect to individual measures to reflect priorities for quality improvement. In developing the conceptual model, we originally considered that the initial scoring method would weight each of the three proposed measures equally. After further examination and based on public comments, we proposed to give greater weight to the Hemoglobin Less Than 10g/dL measure. Low hemoglobin levels below 10g/dL can lead to serious adverse health outcomes for ESRD patients such as increased hospitalizations, need for transfusions, and mortality. Assigning greater weight to the Hemoglobin Less Than 10g/dL measure ensures that providers/facilities are incentivized to continue to properly manage and treat anemia. We believe that this is important in light of concerns that have been raised that the new bundled ESRD payment system could improperly incentivize providers/facilities to under-treat patients with anemia by underutilizing ESAs.

Specifically, we proposed to weight the Hemoglobin Less Than 10g/dL measure as 50 percent of the total performance score (75 FR 49222). The remaining 50 percent of the total performance score would be divided equally between the Hemoglobin Greater Than 12g/dL measure (25 percent) and the Hemodialysis Adequacy Measure (25 percent) (75 FR 49222). When calculating the total performance score for a provider/facility, we would first multiply the score achieved by that provider/facility on each measure (0–10 points) by that measure's assigned weight (either .50 or .25). Then we would add each of the three numbers together, resulting in a number (although not necessarily an integer) between 0–10. Lastly, this number would be multiplied by the number of measures (three) and rounded to the nearest integer (if necessary). In rounding, any fractional portion 0.5 or greater would be rounded up to the next integer, while fractional portions less than 0.5 are rounded down. Thus, a score of 27.4 would round to 27, while 27.6 would round to 28.

In the proposed rule, we discussed our rationale and provided examples of how the proposed scoring methodology would work for calculating the total performance score (75 FR 49222). As discussed in the proposed rule (75 FR 49219), we believe this proposed total performance score methodology is appropriate for the initial performance period in the new ESRD QIP, but recognize that it will be important to monitor the impact and potentially reevaluate this methodology as provider and facility performance changes, and as new measures are added in future years of the ESRD QIP. We requested public comment on the proposed scoring methodology for the ESRD QIP. We also solicited comment on potential weighting methodologies that could be incorporated into the QIP in future years as new measures are introduced.

The comments we received on this proposal and our responses are set forth below.

Comment: Many commenters supported our proposal to weight the three measures. A few commenters recommended that CMS re-evaluate the weights assigned to each performance measure. Several commenters suggested that the weight of the anemia management measure (Hemoglobin Less Than 10g/dL) was too high. Another commenter recommended a weighting schema of 35 percent (Low Hemoglobin), 30 percent (High Hemoglobin) and 35 percent (Dialysis Adequacy), while another suggested a weighting schema of 40 percent (Low Hemoglobin), 20 percent (High Hemoglobin) and 40 percent (Dialysis Adequacy), to highlight the significant impact inadequate dialysis can have on patient morbidity and mortality. Some commenters that supported the proposed weighting methodology for the initial year also asked CMS to revisit the issue in subsequent years, especially if additional measures are adopted for the

QIP or our quality improvement priorities change.

Response: The purpose of giving greater weight to the Hemoglobin Less Than 10g/dL Measure was twofold: (1) To provide a disincentive to providers/facilities to under-treat patients for anemia, particularly in light of the implementation of the new ESRD PPS; and (2) to reflect the clinical importance of this measure. Low hemoglobin levels that are not appropriately managed can lead to increased morbidity and mortality. In terms of giving greater weight to the Hemodialysis Adequacy (URR) Measure, we agree that inadequate dialysis contributes to what should otherwise be avoidable negative patient outcomes. As we have noted earlier in this final rule, we eventually intend to propose to replace the Hemodialysis Adequacy Measure with Kt/V, which is a more precise measure of dialysis adequacy. Further, unlike URR values, which are only reported for patients above the age of 18 years receiving in-center hemodialysis, Kt/V values can be reported for all ESRD beneficiaries. If we propose to replace the Hemodialysis Adequacy Measure with a measure that uses Kt/V values, we will re-evaluate our weighting methodology in light of the change. We also note that as the QIP evolves and as new measures are adopted in the program, we will reexamine the overall weighting methodology to ensure that it aligns with our quality improvement priorities. However, for the reasons discussed above, we believe that the proposed weighting methodology reflects our current quality goals.

Comment: One commenter suggested that CMS adopt a scoring system that will not unduly penalize providers/facilities for small deviations from the QIP performance standards.

Response: Based on our evaluation of historical data, we believe that the initial performance standards are achievable by most providers/facilities. We also considered whether providers/facilities would be unduly penalized for small deviations from the ESRD performance standards and used historical data to model various outcomes that could occur under the proposed scoring methodology. We concluded that because provider/facility performance will be initially evaluated based on the lower of the 2008 national performance rates or provider/facility specific performance in 2007, the proposed scoring methodology allows for flexibility in meeting ESRD QIP standards and will not result in undue penalties for providers/facilities. We appreciate the commenter's concern that providers/facilities not be unduly penalized; however, we believe that the methodology carefully balances this concern with the need to adequately incentivize meaningful quality improvement. After consideration of the comments, we are finalizing the scoring methodology as proposed.

D. Payment Reductions Using the Total Performance Score

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the scoring methodology results in an appropriate distribution of reductions in payments among providers and facilities achieving different levels of total performance scores; with providers and facilities achieving the lowest total performance scores receiving the largest reductions.

We proposed to implement a sliding scale of payment reductions for payment consequence year 2012, where the minimum total performance score that providers/facilities would need to achieve in order to avoid a payment reduction would be a score of 26 out of 30 points (75 FR 49224). Providers/facilities that score between 21–25 points would receive a 0.5 percent payment reduction; between 16–20 points a one percent payment reduction; between 11–15 points a 1.5 percent payment reduction; and between 0–10 points a two percent payment reduction (75 FR 49224).

In developing the proposed payment reduction scale, we carefully considered the size of the incentive to providers/facilities to provide high quality care and the range of total performance scores to which the payment reduction applies, recognizing that this would be the first year of a new program. Our goal is to avoid situations where small deficiencies in a provider/facility's performance results in a large payment reduction. We noted that we want to avoid imposing a large payment reduction on providers/facilities whose performance on one or more measures falls just slightly below the performance standard (75 FR 49224). At the same time, poorly performing providers/facilities should receive a more significant payment reduction. Our analysis suggests that using payment differentials of 0.5 percent for the total performance score ranges distinguishes between providers/facilities with fair to good performance and providers/facilities with poor performance. We will consider other differentials between payment levels for future years of the QIP, which we believe will further differentiate providers/facilities based on their performance. Additionally, section 1881(h)(1)(A) of the Act requires that the Secretary implement payment reductions of up to two percent, and section 1881(h)(3)(A)(ii) requires that the application of the total performance score methodology result in an appropriate distribution of reductions in payment among providers/facilities. Consistent with these requirements, we believe that Medicare beneficiaries will be best served if the full two percent payment reduction is initially applied only to those providers/facilities whose performance falls well below the performance standards. We believe that applying a payment reduction of two percent to providers/facilities whose performance falls significantly below the performance standards, coupled with applying 0.5 payment differential reductions to providers/facilities based on lesser degrees of performance deficiencies, will incentivize all providers/facilities to improve the quality of their care in order to avoid or reduce the size of a payment reduction. We requested public comments about how the proposed payment reduction scale would incentivize providers/facilities to meet or exceed the performance standards for the first year of the QIP, and whether it is an appropriate standard to use in future years.

In general, ESRD facilities are paid monthly by Medicare for the ESRD services they furnish to a beneficiary even though payment is on a per-treatment basis. In finalizing the new bundled payment system starting on January 1, 2011, we elected to continue the practice of paying ESRD facilities monthly for services furnished to a beneficiary

We proposed to apply any payment reduction under the QIP for payment consequence year 2012 to the monthly payment amount received by ESRD facilities and providers. The payment reduction would be applied after any other applicable adjustments to an ESRD facility's payment were made, including case-mix, wage index, outlier, *etc.* (This includes providers/facilities being paid a blended amount under the transition and those that had elected to be excluded from the transition and receive its payment amount based entirely on the payment amount under the ESRD PPS.)

Section 1833 of the Act governs payments of benefits for Part B services and the cost-sharing amounts for services that are considered medical and other health services. In general, many Part B services are subject to a payment structure that requires beneficiaries to be responsible for a 20 percent co-insurance after the deductible (while Medicare pays 80 percent). With respect to dialysis services furnished by ESRD

facilities, under section 1881(b)(2)(a) of the Act, payment amounts are 80 percent (and 20 percent by the individual).

Under the proposed approach for implementing the QIP payment reductions, the beneficiary co-insurance amount would be 20 percent of the total Medicare ESRD payment, after any payment reductions are applied. To the extent a payment reduction applies, we note that the beneficiary's co-insurance amount would be calculated after applying the proposed payment reduction and would thus lower the co-insurance amount.

We proposed to incorporate the statutory requirements of the QIP payment reduction set forth in proposed § 413.177.

The comments we received on this proposal and our responses are set forth below.

Comment: Several commenters recommended that CMS set the maximum first-year penalty (that is, payment reduction) in the QIP at one percent. The commenters characterized section 1881(h)(1)(A) of the Act as saying that "[p]ayment consequences of QIP should be up to two percent," and believe that the Secretary has some latitude in setting the maximum payment reduction as an amount lower than two percent. Commenters noted that some provider/facilities have a case-mix (for example, nursing home patients, patients with complex conditions) that may make meeting the performance standards difficult. One of the commenters suggested that the lower penalty be used in the first year to allow for establishment of standards. A few commenters further suggested that payment reductions be implemented in increments of one quarter percent to support a one percent maximum reduction.

Response: We understand the importance of implementing the ESRD QIP in a manner that does not unfairly penalize providers/facilities, and we believe that the performance standards we are initially setting will be achievable by the majority of providers/facilities. However, we also believe that a full 2 percent payment reduction is appropriate for the lowest performers and that it will incentivize them to improve the quality of care they furnish to ESRD beneficiaries. We acknowledge the commenters' concern that some providers/facilities face increased challenges due to the population they serve (for example, nursing home patients, higher number of patients with complex conditions). Below, we discuss the monitoring plan we intend to implement for the ESRD QIP to monitor, in part, the distribution of measure outcomes that show a possible pattern of concern.

Comment: Many commenters suggested that any funds withheld from provider/facility payments be used as additional incentive payments to other providers/facilities. Several commenters expressed strong concern that the quality incentive program would function only as a disincentive program and should not be used as a mechanism to achieve financial savings in the system. Specifically, some commenters requested any funds withheld from providers/facilities that failed to meet the national performance standards should be redistributed to providers/facilities that exceeded the national performance standards.

Response: We appreciate the commenters' concerns; however, we interpret section 1881(h)(1)(A) of the Act to require the Secretary to make payment reductions of up to 2 percent with respect to payments that would otherwise be made to providers/facilities if those providers/facilities do not meet the requirements of the ESRD QIP. The statute that establishes the QIP does not provide authority to issue bonus payments for performance above the standards selected for the QIP.

Comment: One commenter recommended that CMS apply the maximum penalty of a two percent payment reduction to any provider/facility whose performance on the Hemoglobin Less Than 10g/dL Measure falls six percent or more below the performance standard.

Response: We agree with the commenter about the higher relative importance of the Hemoglobin Less Than 10g/dL Measure and for that reason, we proposed to weight that measure more heavily in calculating the total performance score. However, we also believe that the maximum penalty should initially be applied only to those providers/facilities whose performance falls well below the performance standards for all three measures. We believe that instituting an automatic payment reduction along the lines suggested by the commenter would dilute the importance of the other measures. A score-based system provides an incentive for providers/facilities to track their progression over time while not neglecting outcomes on other measures. We would not want to apply such a reduction to provider/facilities that had achieved high scores on the other two measures, thereby removing any incentive for them to perform well on those measures in the future.

Comment: One commenter suggested that a two percent payment reduction is not a large enough deduction to ensure the quality and safety of dialysis patients.

Response: Section 1881(h)(1)(A) of the Act does not permit the Secretary to make payment reductions greater than two percent for ESRD providers/facilities. In determining the potential impact on facilities of all sizes, it was important to identify a maximum percentage level of payment reduction that provides an incentive, yet is not overly burdensome.

Comment: A few comments discussed the impact of lower beneficiary co-insurance amounts as a result of a payment reduction. One commenter expressed concern that higher co-insurance costs at high-performing ESRD facilities might serve as a disincentive for patients and that lower income patients may not be able to pay higher out-of-pocket costs, reducing patients' access to quality care. Another commenter agreed with CMS' proposal to calculate beneficiary co-insurance after applicable quality payment reductions are made, arguing that beneficiaries should not have to pay higher co-insurance for care delivered by facilities that perform below quality standards.

Response: Under section 1881(h)(1)(A), the Secretary is required to make reductions to the "payments otherwise made" to a provider/facility that furnishes ESRD services to an individual with ESRD. We interpret the phrase "payments otherwise made" to be the payments for ESRD services that would otherwise be made after applying all applicable adjustments, such as case-mix, wage index, and outlier. We note that there will be no increase in beneficiary co-insurance and that any changes to beneficiary co-insurance resulting from the QIP will likely be minimal. As such, we do not believe that resulting changes in co-insurance amounts will significantly affect beneficiary selection of providers/facilities.

After consideration of the public comments, we are finalizing the proposed methodology for implementing the QIP payment reductions as proposed. We are also finalizing our proposed addition of 42 CFR 413.77, which states that ESRD facilities that do not meet the requirements of the ESRD QIP will be subject to up to a 2 percent reduction in their payments otherwise made under section 1814(b)(14) of the Act.

E. Public Reporting Requirements

1. Introduction

Section 1881(h)(6)(A) of the Act requires the Secretary to establish procedures for making information regarding performance under the ESRD QIP available to the public, including information on the total performance score (as well as appropriate comparisons of providers and facilities to the national average with respect to such scores) and performance scores for individual measures achieved by each provider and facility. Section 1881(h)(6)(B) further requires that a provider or facility has an opportunity to review the information to be made public with respect to it prior to its publication.

In addition, section 1881(h)(6)(C) of the Act requires the Secretary to provide each provider and facility with a certificate containing its total performance score to post in patient areas within their facility. Finally, section 1881(h)(6)(D) of the Act requires the Secretary to post a list of providers/facilities and performance-score data on a CMS-maintained Web site.

2. Notifying Providers/Facilities of Their QIP Scores

Section 1881(h)(6)(B) of the Act requires CMS to establish procedures that include giving providers/facilities an opportunity to review the information that is to be made public with respect to the provider or facility prior to such data being made public.

CMS currently uses a secure, Web-based tool to share confidential, facility-specific, quality data with providers, facilities, and select others. Specifically, we provide annual Dialysis Facility Reports (DFRs) to dialysis providers/facilities, ESRD Network Organizations, and State Survey Agencies. The DFRs provide valuable facility-specific and comparative information on patient characteristics, treatment patterns, hospitalizations, mortality, and transplantation patterns. In addition, the DFRs contain actionable practice patterns such as dose of dialysis, vascular access, and anemia management. We expect providers and facilities to use the data included in the DFRs as part of their ongoing clinical quality improvement projects.

The information contained in the DFRs is sensitive and, as such, most of that information is made available through a secure Web site accessible only by that provider/facility and its ESRD Network Organization, State Survey Agency, and the applicable CMS Regional Office. However, select measures based on DFR data are made available to the public through the Dialysis Facility Compare (DFC) Web site, which allows Medicare beneficiaries and others to publically review and compare characteristics and quality information on dialysis providers and facilities in the United States. To allow dialysis providers/facilities a chance to "preview" these data before they are released publicly, we supply draft DFRs to providers/facilities in advance of every annual DFC update. Dialysis providers and facilities are generally given 30 days to review their facility-specific data and submit comments if the provider/facility has any questions or concerns regarding the report. A provider/facility's comment is evaluated and researched. If a provider/facility makes us aware of an error in any DFR information, a recalculation of the quality measurement results for that provider/facility is conducted, and the revised results are displayed on the DFC Web site.

We proposed to use the above-described procedures, including the DFR framework, to allow dialysis providers/facilities to preview their quality data under the QIP before a payment reduction is applied and that data is reported publicly. Specifically, the quality data available for preview through the Web system will include a provider/facility's performance score (both in total and by individual quality measure) as well as a comparison of how well the provider/facility's performance scores compare to national averages for total performance and individual quality measure performance (75 FR 49225). We believe that adapting these existing procedures for purposes of the ESRD QIP will create minimum expense and burden for providers/facilities because they will not need to familiarize themselves with a new system or process for obtaining and commenting upon their preview reports. We also note that under these procedures, dialysis providers and facilities would have an opportunity to submit performance score inquiries and to ask questions of CMS data experts about how their performance scores were calculated on a facility-level basis. This performance score inquiry process would also give providers/facilities the opportunity to submit inquiries, including what they believe to be errors in their performance score calculations, prior to the public release of the performance scores. Every provider/facility that submits an inquiry will receive a response.

While we believe that the DFR process is the most logical solution for meeting the data preview requirements at this time, we may decide to revise this approach in the future. Should we decide to make changes, or should we find a more administratively feasible or cost-effective solution, we proposed to use sub-regulatory processes to revise our approach for administering the QIP performance score preview process in a way that maintains our compliance with section 1881(h)(6)(B) of the Act. We also proposed to use sub-regulatory processes to determine issues such as the length of the preview period and the process we will use to address inquiries received from dialysis providers/facilities during the preview period.

We requested public comments on our proposal to use the DFR process and suggestions for other options that will allow dialysis providers/facilities to preview the information that is to be made public with respect to the provider or facility in advance of such information being made public.

The comments we received on this proposal and our responses are set forth below.

Comment: Although one commenter agreed with our proposal to use the existing DFR process to allow providers/facilities to preview their QIP data and make performance score inquiries, it suggested that CMS extend the review period from 30 days to 60 days.

Response: We believe the 30-day preview period is an adequate timeframe for providers/facilities to review their performance information and submit questions regarding their performance scores. Because the initial measures have been collected by ESRD providers/facilities since 2001, we believe that providers/facilities should be familiar with how they are calculated. We have also worked to make the calculation of the measures and the scoring methodology as transparent as possible to facilitate review by providers/facilities.

Comment: Another commenter recommended that there be a method to allow providers/facilities to post comments related to their scores.

Response: We appreciate the suggestion and will explore the possibility of allowing providers/facilities to post comments related to their scores on an appropriate venue (for example, a secure Web site).

Comment: One commenter suggested that there be a formal appeals process so that providers may appeal a payment determination if they believe it was made in error.

Response: As part of the preview process we discuss above, providers/facilities may submit inquiries related to what they believe to be one or more errors in their performance score

calculations, and we will respond to those inquiries. We note, however, that under section 1881(h)(5)(A), there is "no administrative or judicial review under section 1869, section 1878, or otherwise of * * * the determination of the amount of the payment reduction under paragraph (1)."

After consideration of the public comments, we are finalizing the proposed methodology for notifying providers/facilities of their QIP Scores as proposed.

3. Informing the Public Through Facility-Posted Certificates

Section 1881(h)(6)(C) of the Act requires the Secretary to provide certificates to dialysis providers and facilities about their total performance scores under the QIP. This section also requires each provider/facility that receives a QIP certificate to display it prominently in patient areas.

We proposed to meet this requirement by providing providers and facilities with an electronic file in a generally accessible format (for example, Microsoft Word and/or Adobe Acrobat). We proposed to disseminate these certificates to providers and facilities once per year after the preview period for the QIP performance scores has been completed. We would use a secure, Web-based system, similar to the system used to allow facilities to preview their QIP performance scores, to disseminate certificates. The secure Web-based system would allow CMS to transmit performance score certificates to providers/facilities in a secure manner. We stated that we would make every effort to synchronize the release of the certificates for provider/facility display with the release of performance score information on the Internet.

Under our proposal, each provider/facility would be required to display the certificate no later than 5 business days after CMS sends it. We stated that we expect that dialysis providers/facilities would have the capability to download and print their certificates from the secure Web site. We proposed that providers/facilities would be prohibited from altering the content of the certificates and that they must print the certificates on plain, blank, white or light-colored paper, no smaller than 8½ inches by 11 inches (a standard-sized document). In addition, providers/facilities may not reduce or otherwise change the font size on the certificate.

We proposed that each provider/facility must post at least one copy of the certificate prominently in a patient area of the dialysis provider/facility. Specifically, we proposed that providers/facilities must post the certificate in a conspicuous place where they post other patient-directed materials so that it is in plain view for all patients (or their parents/guardians or representatives) to inspect. We stated that we would update the certificates annually with new performance information, and that providers/facilities would be required to post the updated certificate within 5 business days of the day that we transmit it. We stated that we expect that providers/facilities will take steps to prevent certificates from being altered, defaced, stolen, marred, or covered by other material. In the event that a certificate is stolen or destroyed while it is posted, providers/facilities would be responsible for replacing the stolen or destroyed certificate with a fresh copy by re-printing the certificate file they have received from CMS. The provider/facility would also be responsible for answering patient questions about the certificate in an understandable manner, taking into account that some patients might have limited English proficiency.

We proposed to include on the certificate of each provider/facility all of the information that we are also making available to the public under sections 1881(h)(6)(A) and 1881(h)(6)(D) with respect to the provider/facility. These data elements include:

- The total performance score achieved by the provider/facility under the QIP with respect to the year involved;
- Comparative data that shows how well the provider/facility's total performance score compares to the national total performance rate;
- The performance score that the provider/facility achieved on each individual measure with respect to the year involved; and
- Comparative data that shows how well the provider/facility's individual quality measure performance scores compare to the national performance rate for each quality measure. (75 FR 49226).

We considered several options for making the QIP performance score data available via certificate. Regarding the content of the certificates, we considered including not just information for the ESRD QIP-related quality measures, but additional quality measure information that CMS has at its disposal from the DFC Web site that is not related to the QIP, such as risk-adjusted survival information. Ultimately, we determined that an electronic method of disseminating certificates was the easiest way for CMS to deliver certificates directly to providers/facilities because it is the least burdensome and most cost effective way of providing the certificates. We also determined that the information posted on the certificates should be restricted only to QIP information. We believe that limiting the information on the certificate to QIP-specific data will make the certificate easier for Medicare beneficiaries to read and understand.

We requested public comments on how to make the information contained on the certificate as user friendly and easy to understand as possible, and how to make the information available to Medicare beneficiaries who may be unable to read the certificates due to a physical disability or because of limited or no reading proficiency in the English language. We stated that we were particularly interested in comments on how we can educate Medicare beneficiaries and their families about the presence of certificates in dialysis providers/facilities and how the information can be used to engage in meaningful conversations with their dialysis caregivers and the clinical community about the quality of America's kidney dialysis care.

Furthermore, we requested public comments on the proposal to use the DFR distribution process to provide the certificates to providers/facilities under section 1881(h)(6)(C) of the Act. Specifically, we requested comments on the feasibility and advisability of using the DFR system to provide the certificates to providers/facilities in a generally available format such as Microsoft Word or Adobe Acrobat.

The comments we received on this proposal and our responses are set forth below.

Comment: A few commenters offered recommendations about how to help patients interpret the certificates (including considerations for beneficiaries with limited English proficiency and low health literacy and/or numeracy) as well as provider/facility survey reports. One of the commenters recommended that the State survey reports and any complaint investigations by CMS or the ESRD Networks be posted in dialysis facilities along with the QIP certificates. Another commenter suggested that the certificates account for various levels of reading ability as well as cultural and language diversity. In addition, another commenter viewed the posting of the certificate as an opportunity to educate ESRD patients on quality and recommended including data on beneficiary-specific results (for example, hospitalizations, infections, UFR (Ultra-Filtration Rate) (ml/kg/hr), measures of bone health, Kt/V, and hemoglobin) in the context of the provider/facility's

results (and in the context of state, Network area, national results), as well as CMS guidance on how to use the information. The commenter also offered that of the three finalized measures, only the Hemoglobin Less Than 10g/dL should be displayed.

Response: We appreciate the comments on how to make the QIP certificates useful and easy to understand for beneficiaries and other dialysis facility visitors. We will consider the suggestions from the commenters as we craft the certificates' visual display and language. Whenever possible, we will share draft designs with the public and seek a broad range of stakeholder input. We will consider including additional information on the certificates in future years. Also, we plan to include on the 2012 certificates quality data related to all three measures that we use to calculate the provider/facility's total performance score because we believe that this information is critical to inform beneficiaries and the public about the quality of care that the facility/provider is delivering, and that Medicare beneficiaries deserve. We believe that including on the certificates information related to all three measures, rather than just the Hemoglobin Less Than 10g/dL Measure, will provide a better picture of ESRD provider/facility care. Lastly, it is important to note that we have proposed to make enhancements to the DFC Web site so that it includes the same information that appears on the certificates, which we believe will provide more robust and meaningful information to beneficiaries. With access to more useful information, we hope that this will encourage more effective communication between patients and their providers.

Comment: One commenter recommended that performance scores be eliminated from the public certificate. The commenter stated that, "without appropriate individualized counseling as to the 'scores,' the document may lead to more confusion than what its intent originally was meant to accomplish." One of the commenters also noted that wherever CMS reports quality, consistency in its reporting is the most important decision CMS can make in public reporting. The commenter stated that patients need to be able to see the same quality information on the certificates that they see on the DFC Web site.

Response: Although we understand the commenter's concern, section 1881(h)(5)(C) of the Act requires that each certificate indicate the total performance score achieved by the provider/facility. We appreciate the commenter's concern that the information be put into context for the reader. As previously mentioned, we are working to design the certificate so that it is a useful tool for beneficiaries. We are also working on a strategy for educating ESRD beneficiaries and their caregivers about what the certificates say and their implications for the quality of care ESRD beneficiaries can expect to receive from their provider/facility. We also will assure that information on the certificates matches what is contained on the DFC Web site.

After consideration of the public comments, we are finalizing the proposed methodology for informing the public through facility-posted certificates as proposed.

4. Informing the Public Through a Medicare Web Site

Section 1881(h)(6)(D) of the Act requires the Secretary to use a CMS-maintained Web site for the purpose of establishing a list of dialysis providers/facilities that furnish renal dialysis services to Medicare beneficiaries and indicates the total performance score and the performance score for individual measures achieved by the provider or facility.

We currently use the DFC Web site (a CMS-maintained Web site) to publish information about the availability of dialysis providers/facilities across the United States, as well as data about how well each of these providers/facilities has performed on existing dialysis-related quality of care measures. DFC is part of a larger suite of "Compare" tools, all of which are available online at *http://www.medicare.gov.* In addition to DFC, the suite of Compare sites include Nursing Home Compare, Home Health Compare, and Hospital Compare, as well as tools that allow users to compare prescription drug plans, health plans, and Medigap policies.

DFC links Medicare beneficiaries with detailed information about each of the over 5400 dialysis providers/facilities certified to participate in Medicare, and allows them to compare providers/facilities in a geographic region. Users can review information about the size of the provider/facility, the types of dialysis offered, the provider/facility's ownership, and whether the provider/facility offers evening treatment shifts. Beneficiaries can also compare dialysis providers/facilities based on three key quality measures—how well patients at a provider/facility have their anemia managed, and how well patients at a provider/facility have waste removed from their blood during dialysis, and whether the patients treated at a provider/facility generally live as long as expected. DFC aims to help beneficiaries decide which dialysis provider/facility would best serve their care needs, as well as to encourage conversations among beneficiaries and their caregivers about the quality of care at dialysis providers/facilities, thus providing an additional incentive for dialysis providers/facilities to improve the quality of care they furnish. Lastly, DFC links beneficiaries to resources that support family members, as well as beneficiary advocacy groups.

We proposed to use DFC as the mechanism for meeting the Web-based public information requirement under section 1881(h)(6)(D) of the Act. We noted that the DFC is a consumer-focused tool, and the implementation of the QIP will not change this focus. We recognize that sharing information with the public about the QIP is not only a statutory requirement, it is also a function of open and transparent government. Ultimately, the intent of DFC is to provide beneficiaries with the information they need to be able to make proper care choices.

We believe that DFC already provides accurate and trusted information about the characteristics of all Medicare certified dialysis providers/facilities, as well as information about the quality of care furnished by these providers/facilities. Furthermore, CMS already has the information technology infrastructure in place to support DFC and its public reporting functions; therefore, adding new QIP-related data to the DFC Web site would not create additional significant expenditures or overly burden agency resources.

We proposed to update the DFC Web site once per year at a minimum with the following data elements for every provider/facility listed on DFC (that is, every Medicare-approved provider/facility):

- The total performance score achieved by each provider/facility under the QIP with respect to the year involved;
- Comparative data that shows how well the provider/facility's total performance score compares to the national total performance rate;
- Scores for each of the individual measures that comprise the overall QIP performance score for the provider/facility with respect to the year involved; and
- Comparative data that shows how well the provider/facility's individual quality measure performance scores compare to the national performance rate for each quality measure.

We note that this is the same information we proposed to include on the certificates that we will provide to

providers/facilities. We also note that for the 2012 payment year, we do not propose to include comparative information on DFC about how the provider's or the facility's performance has changed from year to year, since the 2012 total performance score calculation does not provide any differential scoring for improvement versus achievement. However, we will consider including this data on DFC in future program years.

We requested public comments about whether the total performance score and the individual measure performance scores should be integrated into the design of the DFC tool itself or whether we should alternatively implement section 1881(h)(6)(D) by making a file available to the public on the CMS Web site (at *http://www.cms.gov*). We are sensitive to the need to balance our interest in making QIP performance score information public with our need to provide beneficiaries with easy-to-understand, non-technical information about providers/facilities that they can use to make decisions about where to receive dialysis care.

We also requested public comment on the advisability of using DFC as our mechanism for making QIP information available over the Internet. We also requested comment on the presentation of QIP information on the Web site and the breadth of detail that we should make publicly available regarding QIP performance scores. Lastly, we requested comment on how DFC could be redesigned to make QIP information useful to Medicare beneficiaries as they compare the quality of care available at the nation's Medicare-approved dialysis providers/facilities.

The comments we received on this proposal and our responses are set forth below.

Comment: A few commenters recommended that the total performance score and the individual measure performance scores be integrated into the design of the DFC Web site.

Response: We appreciate the suggestion and are currently reviewing strategies for increasing the usefulness of DFC, especially for reporting information from the ESRD QIP. CMS is committed to providing beneficiaries and ESRD stakeholders with information that is accessible and useful.

After consideration of the public comments, we are finalizing the proposed methodology for informing the public through a Medicare Web site as proposed.

F. Applicability of the QIP

We received a number of comments asking if certain types of providers/facilities would be excluded from the first year of the QIP. These comments and our responses are set forth below.

Comment: Several commenters noted their concern that for providers/facilities that treat small numbers of patients, one or a few patients that achieve poor outcomes could dramatically affect the provider/facility's overall performance score. One of the commenters also recommended that CMS develop a statistically valid methodology for evaluating the performance of small dialysis providers/facilities.

Response: We agree with the commenter's concern regarding the potential impact on small providers/facilities, recognizing that one or two poor patient outcomes could greatly skew their performance scores for reasons unrelated to the quality of care they have furnished. Therefore, as we proposed, we are using for purposes of the CY 2012 QIP the specifications for the three finalized measures that are also used for DFC, each of which requires that a provider/facility have a minimum of 11 cases that meet the reporting criteria for the measure in order for us to calculate it. We believe that this minimum case threshold will help prevent the possibility that a small number of poor outcomes artificially, and for reasons unrelated to the quality of care, skews a small provider/facility's performance score. Also, eleven cases is a statistically valid threshold that will give us confidence that a provider/facility's total performance score is an accurate reflection of the quality of care it furnishes. As a result, this threshold will help preserve beneficiary access to care at much needed small providers/facilities in rural and/or under-served areas. We will also be closely monitoring to determine if the implementation of the QIP has any adverse impact on beneficiary access to care, including by looking at the rate of facility closures, and particularly small facility closures. We will also continue to examine how to best treat small providers/facilities and intend to address this issue in future years of the ESRD QIP.

Comment: Several commenters suggested that CMS exclude from the QIP provider/facilities that treat nursing home patients because the complex nature of the health problems faced by these patients will make it difficult for these facilities to achieve the performance standards.

Response: We understand that certain patients present a challenge in terms of their clinical management due to co-morbidities and other factors that add to the complexity of care. However, we do not believe that providers/facilities that treat patients with complex health problems should be subject to a different standard than other providers/facilities.

Comment: One commenter asked if the ESRD QIP would affect home health agencies that provide dialysis supplies and medicine.

Response: We believe that the commenter's question is in reference to the provision of dialysis supplies and medicine under Method II. Effective January 1, 2011 Method II home dialysis will be eliminated. Medicare will no longer make payments directly to DMEPOS suppliers of home dialysis equipment and supplies. All Medicare payments for home dialysis services (including equipment and supplies) will be made to the dialysis provider/facility (75 FR 49056). Thus, the concern raised by the commenter will be moot by the time the QIP incentive payments are made.

Comment: Several commenters questioned how home dialysis providers will be evaluated under the QIP. Specifically, they asked how the absence of a relevant hemodialysis adequacy measure would affect the calculation of their total performance score and potential payment reductions.

Response: The commenters are correct that home hemodialysis patients (as well as peritoneal dialysis patients and pediatric patients) are excluded from the patient population for purposes of calculating the hemodialysis adequacy measure (URR) for payment consequence year 2012. As such, a very small provider/facility may not have a sufficient number of in-center dialysis patients to receive a score on the hemodialysis adequacy measure (URR), but could have enough patient data to be scored on the anemia management measures. For these providers/facilities that do not have enough data to assign a score on all three measures, we will not assign a total performance score for the CY 2012 ESRD QIP and will also not reduce their payment. As stated previously, we believe that requiring a minimum number of cases that meets the measure reporting criteria for the three finalized measures will help prevent the possibility that a small provider/facility's performance score could be greatly skewed for reasons unrelated to the quality of care it furnishes. We are also concerned about the impact of the QIP on small facilities, and particularly how that impact may

affect beneficiary access to these much needed facilities in rural or under-served areas. For these reasons, we will be closely monitoring to determine if the ESRD QIP has any adverse impact on beneficiary access to care, especially at small providers/facilities. We intend to examine alternative methodologies to address this situation for future years of the ESRD QIP.

Comment: Several commenters asked how new providers/facilities would be treated under the QIP. Some commenters asked what performance standards they would have to meet while others recommended that new providers/facilities, or those not in operation for 12 months, or those not in operation for 24 months, be exempt from any potential payment reductions.

Response: Under the special rule in section 1881(h)(4)(E), we will be setting the initial performance standard as the lesser of the provider's/facility's performance during 2007 or the 2008 national performance rates. If a provider/facility was not in existence in 2007, we will assign a score of zero for purposes of assessing which of the two standards applies to the provider/facility. The provider/facility's performance in 2010 will then be compared against that initial performance standard.

G. Additional Comments

Additional comments and our responses are set forth below.

Comment: One commenter asked that CMS utilize formal rulemaking procedures for future changes to the QIP, including changes to the measures, weighting, and scoring methodologies.

Response: We interpret the comment to be asking about the notice and comment rulemaking process (informal rulemaking versus where an agency is required by law to make a decision on the record after the opportunity for an agency hearing). We agree that the informal rulemaking process is the best approach for making changes to the ESRD QIP in the future and will use that approach whenever possible. We note that procedural guidance that does not impact measures, weighting, or scoring methodologies may be issued separate from the rulemaking process. We also note that section 1881(h) of the Act does not require us to establish the ESRD QIP rules via formal rulemaking procedures.

Comment: One commenter suggested that CMS solicit the participation of private insurance companies and Medicare Advantage Plans to develop a quality incentive program similar to the ESRD QIP.

Response: Medicare is currently conducting the Evaluation of the ESRD Disease Management Demonstration to study the effectiveness of disease management for patients enrolled in Medicare Advantage plans. The demonstration will assess participating plans' clinical and financial impact to determine whether integrated disease management programs can minimize treatment complications and improve complications while reducing costs.

We are also exploring the feasibility of implementing a number of other programs that will attempt to align financial incentives with the quality of care delivered. These initiatives will touch on a wide variety of health care settings, including physician offices, inpatient rehabilitation facilities, inpatient psychiatric hospitals, long-term care hospitals, cancer hospitals, ambulatory surgery centers, hospice providers, and hospitals. Within the Medicare Advantage program, section 3201 of the Affordable Care Act requires CMS to provide for enhanced payments based on a Medicare Advantage plan's overall quality rating. CMS looks forward to working with payers, advocacy groups, patients, and other stakeholders in developing important initiatives aimed at transforming Medicare from a passive payer of claims to an active purchaser of quality health care.

Comment: Several commenters stressed the need to encourage greater use of home modalities. Another commenter suggested that CMS make all forms of dialysis equally profitable by equalizing profit margins across all forms of dialysis treatments and monitor recommended treatments to assess whether one treatment is being recommended over another because of the potential to receive a higher profit margin.

Response: Medicare currently pays one rate for all forms of dialysis. We agree with commenters that home dialysis is an important modality for ESRD patients that should be encouraged if clinically appropriate. Home modalities can enable patients to continue with employment and other activities that may be difficult with in-center dialysis. In an effort to promote patient-centered care, we want to ensure there are incentives to provide ESRD patients with options that fit their clinical needs and personal preferences.

We will be monitoring whether the implementation of both the ESRD PPS and the ESRD QIP leads to shifts in modality and, if so, whether those shifts affect the quality of care furnished to ESRD beneficiaries.

Comment: One commenter was concerned about the potential burden on small dialysis providers/facilities if they have to manually record and maintain data for the ESRD QIP.

Response: The measures we have adopted for the initial year of the ESRD QIP are claims-based measures, and we can calculate them using information contained on Medicare FFS claims. To the extent we want to adopt QIP measures in the future for which providers/facilities would need to submit additional data, we will carefully consider any impacts that such data submission might have on providers/facilities.

Comment: One commenter suggested that CMS ensure that facilities/providers submit valid, reliable data and take steps to ensure that they don't misreport data.

Response: We agree that having reliable data is crucial in evaluating provider/facility performance for the QIP and intend to implement a formal validation process in the future. We also intend to monitor the ESRD QIP, including identifying whether certain patterns or trends warrant further investigation or response. We anticipate that these activities will help to ensure that providers/facilities are submitting complete and accurate data.

Comment: One commenter, a former dialysis patient, expressed support for the QIP.

Response: We appreciate the support the commenter expressed.

Comment: One commenter suggested that CMS involve more beneficiaries in committees and study groups.

Response: We appreciate the importance of beneficiary input. Beneficiaries are considered one of the most important stakeholder groups, and we plan to continue our outreach efforts to gather the feedback of beneficiaries and patient advocates when making decisions regarding the QIP.

IV. Future ESRD QIP Considerations

A. Monitoring and Evaluation

CMS plans to monitor and evaluate the new ESRD PPS and ESRD QIP as part of our ongoing effort to ensure that Medicare beneficiaries with ESRD receive high quality care. The monitoring will focus on whether, following implementation of the new PPS and the ESRD QIP, we observe changes in access to and quality of care, especially within vulnerable populations. We will be evaluating the effects of the new ESRD PPS and the QIP and focusing on areas such as:

- Access to care for beneficiaries, including categories or subgroups of beneficiaries;
- Changes in care practices that could adversely impact the quality of care for beneficiaries;

• Patterns of care suggesting particular effects of the new PPS—for example, whether there are increases/decreases in utilization of injectable ESRD drugs and the use of home modalities for certain groups of ESRD beneficiaries;

• Best practices of high-performing providers/facilities that might be adopted by other providers/facilities.

CMS currently collects detailed claims data on patients' hemoglobin levels and adequacy of dialysis, and also collects information on other facets of ESRD care, including treatments provided, drugs, hospitalizations, and deaths. In addition, we collect beneficiary enrollment data which provides important demographic and other information related to Medicare ESRD beneficiaries. These data and other data sources will provide the basis for early examination of overall trends in care delivery, access, and quality. We will also use the data to assess more fully the quality of care furnished to Medicare beneficiaries under the new PPS, and to help inform possible refinements to the PPS and QIP moving forward. We requested public comments about an approach to monitoring and evaluating the ESRD PPS and the ESRD QIP.

The comments we received on this monitoring approach and our responses are set forth below.

Comment: A number of commenters addressed the issue of monitoring and our plan to evaluate the impact of both the new ESRD PPS and the QIP on beneficiary access to, and the quality of, care. Many commenters expressed support for this plan and urged CMS to closely monitor whether the new ESRD PPS and QIP impact the quality of care furnished by ESRD providers/facilities to vulnerable populations and at-risk populations. Citing a March 2010 report issued by the Government Accountability Office (GAO), one commenter recommended that CMS specifically monitor whether injectable drug usage increases or decreases after the new ESRD PPS and QIP go into effect. Other commenters raised the concern that the QIP could lead to increased "cherry picking" in the practice of patient referrals, increased involuntary discharges, and other barriers to dialysis care for difficult-to-treat patients or those patients who might negatively affect provider/facility performance metrics. One commenter recommended the universal implementation of CROWNWeb for monitoring the PPS and the QIP. Another commenter suggested that CMS establish a national database that tracks the number, demographics and reasons why a provider/facility involuntarily discharged/released a patient. Another commenter requested that CMS set forth specific details on how it plans to monitor the effects of the QIP on beneficiaries, that CMS provide details on how it plans to engage the ESRD community to ensure that special needs are met, and that the agency provide an opportunity for public comment on the monitoring plan. One commenter recommended that facilities provide easier methods for patients to return satisfaction surveys. Finally, one commenter requested that the results of studies evaluating the QIP be made public.

Response: Beginning in 2009, we conducted a series of town hall meetings, listening sessions, and other outreach efforts to assess reaction to upcoming changes to the Medicare ESRD program. CMS had identified a need to monitor the impact of both the new ESRD PPS and the QIP, and through these interactions sought the feedback of the ESRD community, including facilities, providers, and patient advocates.

In its March 2010 report, entitled "End-Stage Renal Disease: CMS Should Monitor Access to and Quality of Dialysis Care Promptly after Implementation of New Bundled Payment System" (GAO–10–295), GAO recommended that CMS monitor whether beneficiary access to, and the quality of, dialysis care is diminished or degraded following implementation of the newly expanded ESRD bundled payment system, especially for certain groups of Medicare ESRD beneficiaries who may be more vulnerable. Specifically, the GAO report highlighted a concern that the new ESRD PPS might affect access to and quality of dialysis care for "certain groups of beneficiaries, such as those who receive above average doses of injectable ESRD drugs."

In response to these concerns and as part of fulfilling our mission to ensure effective, up-to-date healthcare coverage and quality care for beneficiaries, we will launch an ESRD services monitoring program to identify changes in beneficiary access to and quality of care following implementation of the ESRD PPS in January 2011 and the QIP in January 2012. The ESRD services monitoring program will enable CMS to identify whether there are access-to-care and quality concerns requiring further examination and response, as well as help to drive continuous improvement by identifying best practices and providing constructive feedback to ESRD facilities and providers. Findings from the monitoring program will also be used to design longer-term evaluation studies assessing relationships between program policies and outcomes. While monitoring alone cannot determine the cause of observed changes, certain events identified through the monitoring program will be used to alert CMS of the need for further review and investigation.

In addition to conducting monitoring activities, CMS will be evaluating the impact of the new program on access to and quality of care for Medicare ESRD beneficiaries. Evaluation takes a long-term focus, examining relationships between ESRD PPS and/or QIP policies and patient outcomes for vulnerable subpopulations of ESRD beneficiaries over a study period.

In developing the ESRD services monitoring and evaluation program, we sought input from a broad array of stakeholders, including ESRD providers/facilities, the ESRD Network Organizations, and patient advocates. We also took into account the recommendations of a study that looked at whether particular segments of the ESRD population, including racial and ethnic minorities and other populations that we consider to be vulnerable or at-risk, could be disproportionately affected by the new ESRD PPS.

As part of the planned ESRD services monitoring and evaluation program, we will also examine a number of indicators and available data sources to ascertain whether any disruptions in access or quality occur following implementation of the QIP. We intend to track monitoring indicators of facility/provider practice, including patient loss rates, facility closures, and other areas of concern to determine if there are any changes that may need further study. We plan to utilize available data sources, including CROWNWeb, claims data, patient activity reports, provider forms, and other quantitative and qualitative data sources in the monitoring and evaluation program. As we continue to refine and develop the monitoring and evaluation program in 2011 and beyond, we will consider the commenters' suggestions.

As the ESRD services monitoring effort continues to expand and mature in 2012 and beyond, we expect to gain insight into how the ESRD PPS and QIP are affecting the quality of care furnished to individuals with ESRD, and with that insight in mind, we expect to design additional evaluation studies and make information available to the public, including the ESRD community and researchers.

B. Potential QIP Changes and Updates

As noted above, section 1881(h)(4)(B) of the Act provides that the performance standards established under section 1881(h)(4)(A) shall include levels of achievement and improvement, as determined appropriate by the Secretary. We anticipate that we will propose to adopt performance standards under section 1881(h)(4)(A) of the Act that include levels of achievement and improvement for the 2013 QIP.

In addition, we anticipate strengthening the performance standard for each measure in future years of the QIP, including potentially moving away from using the national performance rate as the performance standard and instead identifying absolute standards that reflect performance goals widely recognized by the ESRD medical community as demonstrating high quality care for ESRD patients. For instance, we may seek to raise the performance standard for each of the three measures finalized for the 2012 QIP above the proposed or finalized level (that is, Hemoglobin Less Than 10g/dL—two percent; Hemoglobin More Than 12g/dL—26 percent; and Hemodialysis Adequacy Measure—96 percent).

Additionally, for these initial three finalized measures, we intend to establish the national performance rates of each of these measures as "floors", such that the performance standards will never be lower than those set for the previous year, even if provider/facility performance—and therefore the national performance rate—fails to improve, or even declines, over time. The performance standard to which facilities and providers will be held for these measures will not be lowered from one year to the next. This will better ensure that the quality of ESRD patient care will continue to improve over time. Establishing such floors for performance standards, however, will in no way prohibit the Secretary from establishing performance standards that are higher than the floors if the Secretary determines that higher performance standards are appropriate.

In establishing new measures for the QIP in future years, we intend that the concept of "floors" described above would be established for each new measure and applied to these new measures in order to better ensure improvement in the quality of care, once we have a historical perspective on how the measure performs. While we will consider the use of national performance rates, we also will take into consideration future performance standards that reflect performance goals widely recognized by the ESRD medical community as demonstrating high quality care for ESRD patients, should such a consensus be reached.

As noted above, section 1881(h)(2)(A) of the Act also requires that the measures include, to the extent feasible, measures on patient satisfaction, as well as such other measures that the Secretary specifies, including iron management, bone mineral metabolism (that is, calcium and phosphorus), and vascular access. We are currently developing measures in each of the areas specified in section 1881(h)(2)(A) of the Act and are also moving forward with developing additional measures such as Kt/V, access infection rate, fluid weight management, and pediatric measures. As part of the process of developing these new measures, where necessary data are not currently being collected, we intend to require providers to submit data needed to establish a baseline for each of the measures under consideration, as listed above, as soon as is practicable. For QIP measures, we will use a collection process that has been determined appropriate by the Secretary to obtain this data. We anticipate proposing additional measures, such as those listed above under section 1881(h)(2)(A) of the Act, in future rulemaking for the QIP.

We requested public comments on how we might best incorporate both improvement and achievement standards as specified by the Act. We also requested comments on performance standards for future years of the QIP. We are committed to adopting additional quality measures for the QIP as soon as practicable. While we are evaluating measures for inclusion in future years of the QIP, we also requested public comment on setting performance standards for the first year a new measure is included in the QIP.

The comments we received on these issues and our responses are set forth below.

Comment: A few commenters encouraged CMS to measure improvement as well as achievement under the QIP. One of the commenters expressed disappointment that CMS has chosen not to address improvement in the first year of the QIP.

Response: We believe that levels of achievement and improvement are important components of the future QIP performance standards, and we anticipate proposing to adopt such levels for the 2013 QIP program year.

Comment: Several commenters expressed support for our concept of establishing "floors" for the performance standards, to ensure that a measure's performance standards will never be lowered in future years even if provider/facility performance fails to improve or even declines. Other commenters expressed concern that when measures change (for example, from URR to Kt/V), it would be necessary to establish new floors, and believe that CMS should remain open to changes based on scientific evidence and best practices.

Response: We appreciate the comments supportive of establishing performance standard floors for future years of the QIP, and will continue to examine the benefits of establishing them. We also share the commenters' belief that we must be open to establishing new floors in the event that the scientific evidence or best practice changes with respect to a measure.

Comment: Many commenters offered suggestions regarding the inclusion of additional measures in future years of the QIP. Most commenters strongly advocated for the inclusion of new measures such as Kt/V, transplant referrals, access infection rates, fluid weight management, iron management, bone mineral metabolism, vascular access, patient satisfaction, and measures for pediatric and home hemodialysis patients as soon as possible.

Response: We plan to continuously work to improve the ESRD QIP, including adopting robust measures that provide valid assessments of the quality of care delivered to ESRD beneficiaries by providers and facilities. To that end, we are in the process of developing measures that can be applied to all modalities (that is, home and in-center) as well as the pediatric population. Measures that we are considering proposing to adopt include measures on mineral metabolism, vascular access infections, vascular access type, pediatric anemia (for example, iron targets), pediatric dialysis adequacy (Kt/V), and fluid management. Additionally, we are currently testing the feasibility of using claims data to calculate some of these measures. We are also considering establishing all or part of 2011 as the performance period for the 2013 QIP.

As the ESRD QIP continues to evolve, we realize the importance of assuring that the measures are reviewed and refined to confirm that they continue to align with currently accepted clinical practices. Further, we will review any needs for risk adjustment for measures that currently do not have this specification. As we consider the feasibility of adopting new measures for the QIP, we intend to seek the input of the ESRD community to ensure that the measures we seek to adopt are appropriate, scientifically acceptable,

and valuable to continuous quality improvement.

We are also focused on identifying QIP patient-centered measures such as patient satisfaction, access to nutrition services, referral to transplant, and training for those on home modalities. Patient perceptions of care and support services that contribute to dialysis outcomes are critical. Again, collaboration with beneficiaries as well as the renal community will be important for identifying key issues for measurement. CMS is dedicated to making the measure development and selection process as transparent and inclusive as possible so that it continuously advances the goals of the ESRD QIP to ensure that individuals with ESRD have access to quality care.

Lastly, as we work toward identifying and proposing to adopt new measures for the QIP, we understand the importance of collecting real-time data for more timely measurement of performance. We are working to expand the scope of the CROWNWeb project and intend to explore the feasibility of using the CROWNWeb system to collect QIP data.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected;
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

In the proposed rule, we discussed a disclosure requirement (75 FR 49226). Section 1881(h)(6)(C) of the Act requires the Secretary to provide certificates to dialysis care providers and facilities about their total performance scores under the QIP. This section also requires each provider and facility that receives a QIP certificate to display it prominently in patient areas.

To comply with this requirement, we proposed to issue QIP certificates to providers and facilities via a generally accessible electronic file format. We proposed that each provider and facility would prominently display the QIP certificate in patient areas. In addition, we proposed that each provider and facility will take the necessary measures to ensure the security of the certificate in the patient areas. Finally, we proposed that each provider/facility would have staff available to answer questions about the certificate in an understandable manner, taking into account that some patients might have limited English proficiency.

We finalized these requirements in this final rule.

We stated in the proposed rule that the burden associated with the aforementioned requirements is the time and effort necessary for providers and facilities to print the QIP certificates, display the certificate prominently in patient areas, ensure the safety of the certificate, and respond to patient inquiries in reference to the certificates. We estimated that 4,311 providers and facilities will receive QIP certificates and will be required to display them. We also estimated that it will take each provider or facility 10 minutes to print, prominently display and secure the QIP certificate, for a total estimated annual burden of 719 hours. We estimated that approximately one-third of ESRD patients will ask a question about the QIP certificate. We further estimated that it will take each provider/facility five minutes to answer each patient question about the QIP certificate, or 1.65 hours per provider or facility each year. We estimated that the total annual burden associated with this requirement would be 7,121 hours. We also estimated that the total annual burden for both displaying the QIP certificates and answering patient questions about the certificates would be 7,840 hours. While the total estimated annual burden associated with both of these requirements would be 7,840 hours, we stated that we did not believe that there would be a significant cost associated with these requirements because we would not be requiring providers/facilities to complete new forms. As discussed in the proposed rule (75 FR 49228), we estimated the total cost for all ESRD facilities to comply with the collection of information requirements would be less than $200,000.

We did not receive any comments related to this information collection and are finalizing these burdens.

VI. Regulatory Impact Analysis

A. Statement of Need

This final rule implements a QIP for Medicare ESRD dialysis providers and facilities with payment reductions beginning January 1, 2012. Under section 1881(h) of the Act, after selecting measures, establishing performance standards that apply to each of the measures, specifying a performance period, and developing a methodology for assessing the total performance of each provider and facility based on the specified performance standards, the Secretary is required to apply an appropriate reduction to ESRD providers and facilities that do not meet or exceed the established total performance score. We view the ESRD QIP required by section 1881(h) of the Act as the next step in the evolution of the ESRD quality program that began more than 30 years ago. Our vision is to implement a robust, comprehensive ESRD QIP that builds on the foundation that has already been established.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is not an economically significant rule because we estimate that the effects of the rule will fall well below the economic threshold of $100 million (*see* analysis below). In addition, given this estimated impact, this final rule also is not a major rule under the Congressional Review Act. We requested comments on the economic analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small

entities. For purposes of the RFA, approximately 19 percent of ESRD dialysis facilities are considered small entities according to the Small Business Administration's size standards, which consider small businesses those dialysis facilities having total Medicare revenues of $34.5 million or less in any one year, and 19 percent of dialysis facilities are nonprofit organizations. For more information on SBA's size standards, *see* the Small Business Administration's Web site at *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (Kidney Dialysis Centers are listed as 621492 with a size standard of $34.5 million).

For purposes of the RFA, using DFC performance data based on Medicare claims from 2007 and 2008, we consider the 802 independent facilities and hospital-based facilities to be small entities. The ESRD facilities that are owned and operated by a Large Dialysis Organization (LDO) and/or regional chain, comprising approximately 3,509 facilities, would have total revenues in excess of $34.5 million in any year when the total revenues for all locations are combined for each business (individual LDO or regional chain). Table 5 below shows the estimated impact of the QIP on small entities for payment consequence year 2012. The distribution of ESRD providers/facilities by facility size (both among facilities considered to be small entities for purposes of this analysis and by number of treatments per facility), geography (both urban/rural and by region), and by facility type (hospital based/freestanding facilities).

TABLE 5—IMPACT OF ESRD QIP PAYMENT REDUCTIONS TO ESRD FACILITIES FOR CY 2012 INCLUDES ESTIMATED IMPACT ON SMALL ENTITIES FOR REGULATORY FLEXIBILITY ACT (RFA) ANALYSIS

Facility type	Number of facilities	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments)
All Facilities	4,311	1,106	−0.19
Type:			
Freestanding	3,916	977	−0.18
Hospital Based	167	47	−0.25
Unknown [1]	228	82	−0.30
Facility Size: [2]			
Small entities	802	252	−0.27
Large entities	3,509	854	−0.17
Urban/Rural status:			
Urban	3,159	788	−0.19
Rural	924	236	−0.18
Unknown [3]	228	82	−0.30
Geographic Region:			
Northeast	652	182	−0.22
South	2,048	521	−0.18
Midwest	871	237	−0.22
West	705	158	−0.16
Other [4]	35	8	−0.23
Facility Size (number of treatments):			
Less than 3,000 treatments	261	77	−0.28
3,000–9,999 treatments	2,566	675	−0.20
Over 10,000 treatments	1,484	354	−0.18

[1] Based on DFC self-reported status.
[2] "Small entities" include hospital-based facilities and non-chain facilities based on DFC self-reported status.
[3] Based on DFC self-reported status.
[4] Includes American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands.
Source: Analysis of DFC/Medicare claims data (2007–2008) for ESRD providers/facilities reporting data on all three measures.

We note that guidance issued by the Department of Health and Human Services interpreting the RFA considers effects to be economically significant if they reach a threshold of three to five percent or more of total revenue or total costs. Under the final rule, the maximum payment reduction applied to providers/facilities, regardless of its size, is 2.0 percent of aggregate Medicare payments for dialysis services. This falls below the 3.0 percent threshold for economic significance established by HHS. To further ascertain the impact on small entities for purposes of the RFA, we projected provider/facility performance based on DFC performance data from 2007 and 2008. For the 2012 ESRD QIP, of the 1,106 ESRD facilities expected to receive a payment reduction, 252 small entities would be expected to receive a payment reduction (ranging from 0.5 percent up to 2.0 of total payments). The average payment reduction for the 252 small facilities receiving a payment reduction is approximately $18,000 per facility. Using our projections of provider/facility performance, we next estimated the impact of expected payment reductions on small entities by comparing the total payment reduction for the 252 small entities expected to receive a payment reduction with aggregate ESRD payments to all small entities. For the entire group of 802 small entities, a minor decrease of 0.27 percent in aggregate ESRD payments is observed.

Therefore, we are not preparing an analysis for the RFA because the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Comment: In reviewing Table 9 in the proposed rule (75 FR 49230) for the estimated impact of payment reductions, one commenter noted that 31 percent of small entities will be affected by this proposed rule as opposed to only 24 percent of large entities. The commenter further noted that this disproportionately affects smaller entities, which do not have the inherent volume discounts and diverse purchasing powers that large entities typically have. The payment reduction (percent changes in aggregate ESRD

payments), though considered minor, is estimated to be 0.10 percent higher for smaller entities.

Response: The technical specifications for each of the finalized measures require that a provider/facility has a minimum of 11 cases meeting the measure criteria in order to report it. We believe that these specifications will minimize the rule's economic burden on small entities. Second, we note that for purposes of RFA analysis in determining whether agencies must perform an initial or final regulatory flexibility analysis, agencies must determine whether the regulation is expected to have a significant economic impact on small entities. Though the rule may have a disproportionate, but not economically significant, impact on small entities, it is not relevant for purposes of the analysis. Third, we expect all facilities to provide quality care, particularly in the important areas of anemia management and dialysis adequacy, regardless of size. Finally, we intend to monitor and evaluate the impact of the ESRD QIP on access to and quality of care for ESRD beneficiaries, including indicators of facility financial health, to identify any disruptions or to make future improvements in the program.

Comment: Another commenter noted that CMS has provided an estimate of the number and geographic region of other facilities it projects will receive reductions based on other characteristics (such as small versus large and rural versus urban) but would like to understand the impact of the proposed payment reductions safety-net and other not-for-profit providers. The commenter also stated that it is important to estimate the influence of payment reductions by facility type (for example, large dialysis organizations (LDOs) versus independent facilities).

Response: As stated, we estimate 19 percent of ESRD facilities to be nonprofit for purposes of RFA analysis. These entities are included in the estimates of the impact of payment reductions on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this final rule has a significant impact on operations of a substantial number of small rural hospitals because most dialysis facilities are freestanding. Overall, we estimate that the hospital-based dialysis facilities will experience an average 0.25 percent decrease in payments. As a result, this rule will not have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Finally, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. We do not believe that this rule includes any mandates that would impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $135 million or more in 2010.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule and subsequent final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not believe this final rule will have a substantial direct effect on State or local governments, preempt State law, or otherwise have Federalism implications.

C. Anticipated Effects

This final rule is intended to mitigate possible reductions in the quality of ESRD dialysis facility services provided to beneficiaries as a result of payment changes under the ESRD PPS by implementing a QIP that would reduce ESRD payments by up to two percent to dialysis providers/facilities that fail to meet or exceed a total performance score with respect to performance standards established by the Secretary with respect to certain specified measures. Any reductions in ESRD payment would begin on January 1, 2012 for services furnished on or after January 1, 2012.

The calculations used to determine the impact of this proposed rule reveal that approximately 27 percent, or 1,106, ESRD dialysis facilities would likely receive some kind of payment reduction for 2012. Again using DFC/Medicare claims data from 2007–2008, Table 6 shows the overall estimated distribution of payment reductions resulting from the 2012 ESRD QIP.

TABLE 6—ESTIMATED DISTRIBUTION OF CY 2012 ESRD QIP PAYMENT REDUCTIONS

Payment reduction	Number of ESRD facilities
No Payment Reduction	3,205
0.5% Payment Reduction	709
1.0% Payment Reduction	183
1.5% Payment Reduction	184
2.0% Payment Reduction	30

To estimate the total payment reductions in 2012 resulting from the proposed rule for each facility, we multiplied the number of patients treated at each facility receiving a reduction times an average of three treatments per week. We then multiplied this product by a base rate of $229.63 per dialysis treatment (the finalized 2011 rate, before an adjustor is applied) to arrive at a total ESRD payment for each facility:

((Number of patients treated at each facility × three treatments per week) × base rate)

Finally, we applied the estimated payment reduction percentage expected under the ESRD QIP, yielding a total payment reduction amount for each facility:

(Total ESRD payment × estimated payment reduction percentage)

Totaling all of the payment reductions for each of the 1,106 facilities expected to receive a reduction leads to a total payment reduction of approximately $17.3 million for payment consequence year 2012. Further, we estimate that the total costs associated with the collection of information requirements described in section IV of this final rule would be less than $200,000 for all ESRD facilities. As a result, the estimated aggregate $17.5 million impact for 2012 does not reach the $100 million threshold for an economically significant rule.

D. Alternatives Considered

In developing this final rule, we considered a number of alternatives. We carefully considered the size of the incentive to providers and facilities to provide high-quality care. We also selected the measures adopted for the 2012 ESRD QIP because these measures are important indicators of patient outcomes and quality of care. Poor management of anemia and inadequate dialysis, for example, can lead to avoidable hospitalizations, decreased quality of life, and death. Thus, we believe the measures selected will allow CMS to continue focusing on improving the quality of care that Medicare

beneficiaries receive from ESRD dialysis providers and facilities.

We considered alternatives for identifying the performance standard, including the mean, median, and mode. However, we determined that the national average would be appropriate for the first payment year for the reasons listed below:

- CMS believes that the legislative intent was to set the performance standard at the "average," as this is the performance standard that has been publicly reported on the Dialysis Facility Compare Web site (DFC) for the past ten years and was the standard in effect when the language was crafted;
- Recognizing, however, that there was some flexibility, CMS reviewed other possible standards and noted that there was little difference in the range of performance, with the exception of performance for Hemoglobin Greater Than 12g/dL (Hemoglobin < 10g/dL: 0 percent–3 percent; Hemoglobin > 12g/dL: 8 percent–38 percent; URR ≥ 65 percent: 94 percent–100 percent). As the bundled payment will likely reverse the incentive that may be leading to the wider range for this measure, the differences in the performance did not warrant moving from the use of a national performance rate for performance.
- CMS has seen great improvement in the rates for these measures over the past several years as reported in DFC, in part due to public reporting and continuous oversight and monitoring. The rate for Hemoglobin Less Than 10g/dL has improved and maintained improvement, while Hemoglobin Greater Than 12g/dL improved from 44 percent in 2007 to 26 percent in 2008 as demonstrated below. Should it become evident that the rates begin to move in the wrong direction due to the bundled payment, different performance standards can be proposed through future rulemaking. For example, if the national average for Hemoglobin Less Than 10g/dL began to drop, CMS could propose to require a rate of two percent or less regardless of the national average.
- The national average was also selected because of the rapid implementation date for the first year and because the proposed rule was published more than halfway into the period of performance for the first payment year. Especially for this first year of the QIP, we did not believe introduction of a new performance standard after the period of performance has nearly ended was appropriate.

We also considered alternatives for applying payment reductions. Our main alternatives considered varying point reductions based on each one percentage point a facility or provider was below the performance standard. We did not propose alternatives that applied payment reductions that accounted for the variability seen within each measure, and as noted above, we asked for public comment on such alternatives.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395(g), 1395I(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Public Law 106–113 (133 stat. 1501A–332).

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services and Organ Procurement Costs

■ 2. Section 413.177 is added to subpart H to read as follows:

§ 413.177 Quality Incentive Program Payment.

(a) With respect to renal dialysis services as defined under § 413.171 of this part, in the case of an ESRD facility that does not meet the performance requirements described in section 1881(h)(1)(B) of the Act for the performance year, payments otherwise made to the provider or facility section 1881(b)(14) of the Act for renal dialysis services will be reduced by up to two percent, as determined appropriate by the Secretary.

(b) Any payment reduction will apply only to the payment year involved and will not be taken into account in computing the single payment amount under this subpart for services provided in a subsequent payment year.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 18, 2010.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 15, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–33143 Filed 12–29–10; 11:15 am]

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Part III

Department of Energy

10 CFR Part 431
Energy Conservation Program: Test Procedures for Electric Motors and Small Electric Motors; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0008]

RIN 1904–AB71

Energy Conservation Program: Test Procedures for Electric Motors and Small Electric Motors

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking (SNOPR) proposes to clarify certain terms and language in our regulations for certain commercial and industrial equipment, as follows: revise the definitions of certain terms related to electric motors and small electric motors, clarify the scope of energy conservation standards for electric motors, update references to several industry and testing standards for electric motors, incorporate by reference and update alternative test methods for polyphase and single-phase small electric motors, and specify the determination of efficiency requirements for small electric motors. These actions are being proposed to clarify the scope of regulatory coverage for small electric motors and electric motors and ensure the accurate and consistent measurement of energy efficiency. This notice invites comments on U.S. Department of Energy (DOE) proposals and the issues presented herein, and requests comments, data, and other information that would enable DOE to promulgate a final rule.

DATES: DOE will accept comments, data, and information regarding the SNOPR until February 4, 2011. *See* section IV, "Public Participation," of this supplemental proposed rule for details.

ADDRESSES: Any comments submitted must identify the SNOPR on Test Procedures for Electric Motors and provide the docket number EERE–2008–BT–TP–0008 and/or Regulation Identifier Number (RIN) 1904–AB71. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: small_electric_motors_tp.rulemaking@ee.doe.gov.* Include the docket number EERE–2008–BT–TP–0008 and/or RIN 1904–AB71 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original. Due to the potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, *see* section IV, "Public Participation," of this document.

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

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. E-mail: *Jim.Raba@ee.doe.gov*. In the Office of the General Counsel, contact Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–5709. E-mail: *Ami.Grace-Tardy@hq.doe.gov*.

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I. Introduction

A. Authority

Part A–1 of Title III of the Energy Policy and Conservation Act, as amended (EPCA), provides the Department of Energy ("DOE" or, in context, "the Department") with the authority to promulgate energy conservation standards and related test procedures for certain commercial and industrial equipment. (42 U.S.C. 6311–6317) This supplemental notice of proposed rulemaking addresses issues raised in response to an earlier notice of proposed rulemaking, 73 FR 78220 (December 22, 2008).

B. Background

In the Energy Policy Act of 1992, Public Law 102–486 (October 24, 1992) (EPAct 1992), Congress amended EPCA to establish energy conservation standards, test procedures, compliance certification, and labeling requirements for certain electric motors.[1] In addition, EPAct 1992 directed the Secretary of Energy to determine whether energy conservation standards for small electric motors would be technologically feasible and economically justified, and would result in significant energy savings.[2] On October 5, 1999, DOE published in the **Federal Register**, a final rule that set forth procedures to determine the energy efficiency of electric motors. 64 FR 54114. After determining that energy conservation standards for small electric motors would be technologically feasible and economically justified, *see* 71 FR 38799 (July 10, 2006), DOE initiated a rulemaking to begin the development of standards for small electric motors.[3] Related to these efforts was DOE's publication of a July 7, 2009 final rule prescribing test procedures for small electric motors. 74 FR 32059. Today's supplemental notice of proposed rulemaking (SNOPR) proposes revisions, as summarized below, to the test procedures and definitions related to electric motors and small electric motors that were not addressed in previous rulemakings.

1. Electric Motors

Section 343(a)(5)(A) of EPCA requires that test procedures for electric motor efficiency shall be the test procedures specified in the National Electrical Manufacturers Association (NEMA) Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for electric motor efficiency, as in effect on the date of enactment of EPAct 1992. (42 U.S.C. 6314(a)(5)(A)) Section 343(a)(5)(B) of EPCA directs that if the NEMA and IEEE test procedures are amended, the Secretary of Energy shall amend the efficiency test procedures for electric motors to conform to the amended NEMA and IEEE test procedures, unless the Secretary determines, by rule, that amended procedures are not reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs, and would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(5)(B)) Subsequently, once newer versions of these industry test procedures became available, DOE amended its regulations to include more recent versions of these procedures. MG1–1993 and IEEE Standard 112–1996 were codified at 10 CFR 431.22 (now codified at 10 CFR 431.16 and appendix B to subpart B). In addition, the equivalent CAN/CSA C390–93, "Energy Efficiency Test Methods for Three-Phase Induction Motors" was added in the final rule published on October 5, 1999. 64 FR 54114. These changes were made to ensure that the latest industry practices were incorporated into DOE's regulations and to incorporate related equivalent procedures.

NEMA Standards Publication MG1 was most recently revised and published on April 9, 2010, IEEE Standard 112 was most recently amended in November 2004, and CAN/CSA C390 was most recently amended on March 22, 2010 (as the renamed "Test methods, marking requirements, and energy efficiency levels for three-phase induction motors.") As directed by section 343(a)(5)(B) of EPCA, DOE proposed in a December 22, 2008, test procedure notice of proposed rulemaking (NOPR) (December 2008 NOPR) to update the test procedures in 10 CFR part 431 by incorporating by reference the test methods from the most current versions (at that time) of those industry testing standards. 73 FR 78220. DOE received several comments on its proposed updates as well as on other issues and is addressing them in today's SNOPR for further public review.

2. Small Electric Motors

Section 346 of EPCA requires DOE to prescribe test procedures for those small electric motors for which the Secretary of Energy makes a positive determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(b)(1)) Consistent with this requirement, DOE announced its intention in the determination notice to initiate the development of test procedures for certain small electric motors. 71 FR 38807 (July 10, 2006).

Pursuant to section 346(b)(1) of EPCA, in the December 2008 NOPR, DOE presented potential test methods for measuring the energy efficiency of small electric motors that DOE was considering incorporating into its regulations. 73 FR 78220. DOE proposed to base its test procedure on IEEE Standard 114–2001, "Test Procedure for Single-Phase Induction Motors," IEEE Standard 112–2004, "Test Procedure for Polyphase Induction Motors and Generators," and Canadian Standards Association (CAN/CSA) C747–94, "Energy Efficiency Test Methods for Single- and Three-Phase Small Motors."[4] All of these testing standards are industry-based test procedures that

[1] EPCA, as amended by EPAct 1992, had previously defined an "electric motor" as "any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987." (42 U.S.C. 6311(13)(A) (1992)) Through subsequent amendments to EPCA, Congress removed this definition and replaced it with language denoting two new subtypes of general purpose electric motors. (*See* 42 U.S.C. 6311(13)(A)–(B) (2010))

[2] EPCA, as amended by EPAct 1992, defines the term "small electric motor" to mean a "NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987." (42 U.S.C. 6311(13)(G))

[3] A single-phase small electric motor is a rotating electrical machine that operates on single-phase electrical power, which refers to a single alternating voltage sinusoidal waveform. Similarly, a polyphase small electric motor is a rotating electrical machine that operates on three-phase electrical power, which refers to the sinusoidal waveforms of three supply conductors that are offset from one another by 120 degrees. Small electric motors are generally used as components to drive commercial and industrial pumps, fans, conveyors, and other equipment that require low power (*i.e.,* approximately 3 horsepower and below). 73 FR 78220, 78221 n.2 (December 22, 2008)

[4] The IEEE Standards addressed in this notice are generally listed chronologically by their last date of revision and adoption rather than their sequential number.

are well-known and commonly used by small electric motor manufacturers.

On July 7, 2009, DOE published a final rule adopting test procedures for measuring the energy efficiency of small electric motors. 74 FR 32059. However, there were certain subsidiary issues raised in the December 2008 NOPR that required additional consideration before a final decision could be made on how to address them in light of comments received from interested parties. These issues are addressed in today's SNOPR.

II. Summary of Supplemental Notice of Proposed Rulemaking

Today's SNOPR addresses and solicits comment on particular issues concerning definitions and test procedures for electric motors and small electric motors. DOE prepared this SNOPR to ensure clarity in the definitions and test procedures for electric motors and small electric motors and to address public comments received in response to the December NOPR.

With respect to electric motors, DOE proposes to take four actions. First, DOE proposes to clarify definitions for the terms "electric motor," "fire pump motor," "general purpose electric motor (subtype I)," "general purpose electric motor (subtype II)," and "NEMA Design B." In addition, DOE proposes to rename the term "general purpose motor" to be "general purpose electric motor" consistent with terminology used in the regulations. DOE believes that the proposed revisions to these terms will make the applicable test procedures contained in 10 CFR part 431 appropriate for this equipment while addressing comments from interested parties submitted in response to the December 2008 NOPR. Second, today's notice proposes to clarify the scope of existing and pending energy conservation standards for electric motors in 10 CFR 431.25. Third, DOE proposes to update the references to NIST Handbook 150–10, "Efficiency of Electric Motors," and the associated NIST Handbook 150–10 Checklist, IEC standards documents, CAN/CSA C390, and NEMA MG1 throughout subpart B of 10 CFR part 431. Fourth, DOE proposes revisions to appendix A to subpart B, of 10 CFR part 431, to maintain consistency with the Energy Independence and Security Act (EISA 2007) amendments to the electric motor scope of coverage, and to address acceptable bounds for shaft dimensions for covered general purposes electric motors.

With respect to small electric motors, on July 7, 2009, DOE published a final rule that prescribed test procedures to measure the energy efficiency of small electric motors (July 2009 final rule). 74 FR 32059. Today's SNOPR addresses three related matters that would clarify the scope of coverage and alleviate potential undue testing burdens.

First, DOE proposes to define the represented efficiency value and average full load efficiency for small electric motors.

Second, DOE proposes to include the following test procedures as alternative methodologies for measuring the energy efficiency of polyphase small electric motors: CAN/CSA C747 and CAN/CSA C390. DOE understands that both test methods are equivalent to IEEE Standard 112 Test Methods A and B, respectively, which were adopted in the July 2009 final rule. DOE is also updating existing references to CAN/CSA C747 to the latest version of the standard.

Finally, DOE proposes a method to validate an alternative efficiency determination method (AEDM) for small electric motors, including the statistical requirements to substantiate the AEDM. While the AEDM was addressed in the December 2008 NOPR, comments to that notice indicated that the agency needed to provide additional clarification regarding how manufacturers should use the sample of basic models tested when validating their AEDMs. Today's notice clarifies that issue by proposing an approach based on the AEDM substantiation requirements for 1–200 horsepower electric motors.

The proposed revisions are summarized in the table below and addressed in detail in the following section. Note that all citations to various sections of 10 CFR part 431 throughout this SNOPR preamble refer to the current version of 10 CFR part 431. The proposed regulatory text follows the preamble to this notice. DOE seeks comments from interested parties on each of the proposed revisions.

TABLE 1—SUMMARY OF CHANGES PROPOSED IN THIS SNOPR AND AFFECTED SECTIONS OF 10 CFR PART 431

Existing Section in 10 CFR Part 431	Summary of Proposed Modifications
Section 431.11 of Subpart B—Purpose and Scope	• Clarifies that subpart B is applicable to "electric motors," but not "small electric motors."
Section 431.12 of Subpart B—Definitions	• Revises the definitions of "accreditation," "definite purpose motor," "general purpose electric motor (subtype I)," "general purpose electric motor (subtype II)," and "nominal full load efficiency." • Adds new definitions for "electric motor," "fire pump motor," "general purpose electric motor," and "NEMA Design B motor." • Removes definition of "general purpose motor."
Section 431.14 of Subpart B— Sources for information and guidance	• Removes sources for information and guidance from Section 431.15 and places it in new Section 431.14.
Section 431.15 of Subpart B—Materials incorporated by reference	• Updates reference to CAN/CSA–C390. • Updates references to IEC standards. • Updates reference to IEEE 112. • Updates reference to NEMA MG1.
Section 431.18 of Subpart B—Testing Laboratories	• Updates reference to NIST Handbook 150–10.
Section 431.19 of Subpart B—Department of Energy recognition of accreditation bodies.	• Updates references to IEEE 112 and CAN/CSA C390.
Section 431.20 of Subpart B—Department of Energy recognition of nationally recognized certification programs.	• Updates references to IEEE 112 and CAN/CSA–C390 for electric motors.
Section 431.25 of Subpart B—Energy conservation standards and effective dates.	• Clarifies the scope of efficiency standards in 431.25(a) through (e). • Inserts kilowatt equivalent power ratings in the efficiency standard tables.
Section 431.31 of Subpart B—Labeling Requirements	• Updates reference to NEMA MG1.
Appendix A to Subpart B—Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act.	• Revised for consistency with EISA 2007 amendments.

TABLE 1—SUMMARY OF CHANGES PROPOSED IN THIS SNOPR AND AFFECTED SECTIONS OF 10 CFR PART 431—Continued

Existing Section in 10 CFR Part 431	Summary of Proposed Modifications
Appendix B to Subpart B—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors.	• Includes guidance regarding special shaft designs for motors. • Updates references to NEMA MG1, IEEE 112, and CAN/CSA C390.
Section 431.441 of Subpart X—Purpose and Scope	• Clarifies that subpart X is applicable to "small electric motors," but not "electric motors."
Section 431.443 of Subpart X—Materials incorporated by reference	• Updates reference to CAN/CSA–C747. • Adds reference to CSA–C390. • Updates references to IEEE 112 and 114.
Section 431.444 of Subpart X—Test procedures for measurement of energy efficiency.	• Updates reference to CAN/CSA–C747. • Adds reference to CAN/CSA–C390.
Section 431.445 of Subpart X—Determination of small electric motor efficiency.	• Adds additional guidelines on use of a certification program and references section 431.447 for small electric motors. • Defines the represented efficiency value.
Section 431.447 of Subpart X—Department of Energy recognition of nationally recognized certification programs.	• Adds a section on nationally recognized certification programs for small electric motors similar to section 431.20 for electric motors.
Section 431.448 of Subpart X—Procedures for recognition and withdrawal of recognition of certification programs.	• Adds a section on procedures for recognition of certification programs for small electric motors similar to section 431.21 for electric motors.

III. Discussion

A. Definition of Electric Motor

Before the enactment of EISA 2007, section 340(13)(A) of EPCA, as amended, defined the term "electric motor" as "any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987." Section 313(a)(2) of EISA 2007 struck that definition and established two subtypes: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)) In addition, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of motors: General purpose electric motor (subtype I) with a power rating of 1 to 200 horsepower; fire pump motors; general purpose electric motor (subtype II) with a power rating of 1 to 200 horsepower; and NEMA Design B, general purpose electric motors with a power rating of more than 200 horsepower to 500 horsepower. (42 U.S.C. 6313(b)(2)) All of these standards apply to covered motors that are manufactured alone or as a component of another piece of equipment. The term "electric motor" (which frequently appears throughout EPCA, as amended by EISA, and various subparts of 10 CFR part 431) was left undefined. Consequently, DOE expressed concern that the absence of a definition may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards. 73 FR 78225.

In the December 2008 NOPR, DOE proposed to clarify the EISA definition of "electric motor" to mean any of the following four types of motors: A general purpose electric motor (subtype I), a fire pump motor, a general purpose electric motor (subtype II), or a NEMA Design B general purpose electric motor. 73 FR 78225 and 78235. In DOE's view, applying the term "electric motor" in this manner would clarify that the test procedures prescribed for electric motors would equally apply to each of the four types of motors. 73 FR 78225.

Whereas DOE proposed to separate (and define) the covered electric motors into four distinct and separate types, NEMA asserted that section 313(a)(2) of EISA 2007 categorized covered electric motors into two types: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). Further, NEMA commented that under the DOE-proposed definition of electric motor, a NEMA Design B general purpose electric motor and a fire pump motor would be viewed as separate and apart from general purpose electric motor (subtype I), when in reality they are considered subsets of general purpose electric motors (subtype I). (NEMA, No. 12 at p. 7) [5]

[5] Notations of this form appear throughout this document and identify statements made in written comments or at public hearings that DOE has received and has included in the docket for this rulemaking. For example, "NEMA, No. 12 at p. 7" refers to a comment: (1) From the National Electrical Manufacturers Association; (2) in document number 12 in the docket of this rulemaking; and (3) appearing on page 7 of the submission.

In view of the above and with the term "electric motor" as yet unclear, today's SNOPR proposes to clarify the term "electric motor" to mean "a machine which converts electrical power into rotational mechanical power." Additionally, as discussed below, DOE is proposing to clarify what constitutes a "general purpose electric motor (subtype I)" by enumerating certain design and performance elements, and what constitutes a "general purpose electric motor (subtype II)" by explicitly drawing the distinction between a subtype I and subtype II.

B. Definition of General Purpose Electric Motors, Subtypes I and II

EISA 2007 defines a general purpose electric motor (subtype I) as a motor that meets the definition of "general purpose" which was in effect at the time of enactment of EISA 2007. At that time, 10 CFR part 431 did not contain a definition of "general purpose," although the regulations did define "general purpose motor" as a motor designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, "Usual Service Conditions," and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.03, "Unusual Service conditions," or for a particular type of application, and which can be used in most general purpose applications.

64 FR 54142 (codified at 10 CFR 431.12).

DOE subsequently adopted this definition of "general purpose motor" as the definition of "general purpose electric motor (subtype I)." 74 FR 12058, 12071 (March 23, 2009) (codified at 10 CFR 431.12) In the December 2008 NOPR, DOE did not propose any changes to the definition of "general purpose electric motor (subtype I)."

DOE also did not propose any changes to the definition of "general purpose electric motor (subtype II)" in the December 2008 NOPR because this term was defined in section 313(a)(2) of EISA 2007 and was incorporated without modification into 10 CFR 431.12. 74 FR 12071. The statute defines a subtype II general purpose motor as any motor incorporating the design elements of a general purpose electric motor (subtype I) configured as one of the following:

(i) A U-frame motor;

(ii) A Design C motor;

(iii) A close-coupled pump motor;

(iv) A footless motor;

(v) A vertical solid shaft normal thrust motor (as tested in a horizontal configuration);

(vi) An 8-pole motor (900 rpm); or

(vii) A polyphase motor with voltage of not more than 600 volts (other than 230 or 460 volts).

(42 U.S.C. 6311(13)(B))

In response to the December 2008 NOPR, NEMA and Baldor commented that Congress created confusion when it struck the EPAct 1992 definition of electric motor from section 340(13)(A) of EPCA via section 313(a)(2) of EISA 2007 and subsequently inserted the terms "general purpose electric motor (subtype I)" and "general purpose electric motor (subtype II)" under the umbrella heading "Electric motor" without further clarification. According to NEMA and Baldor, the DOE definition of general purpose electric motor (subtype I) does not provide the essential elements that would differentiate a general purpose electric motor (subtype II) from a general purpose electric motor (subtype I)—the subtype II characteristics described in the statute are also shared with subtype I motors. Consequently, NEMA requested that DOE clarify how it intends to distinguish between a general purpose electric motor (subtype I) and general purpose electric motor (subtype II), particularly because EISA 2007 prescribes different efficiency levels for subtype I and subtype II motors. Further, Baldor suggested that DOE restore the original [EPAct 1992] definition of electric motor, which was struck by the EISA 2007 amendment to EPCA, and from that [EPAct 1992] definition derive clear definitions to differentiate general purpose electric motor (subtype I) and (subtype II). (NEMA, No. 12 at p. 11; Baldor, Public Meeting Transcript, No. 8 at 116–119)

In addition, NEMA commented that section 313(a)(2) of EISA 2007 defines a general purpose electric motor (subtype II) as one that incorporates the design elements of a subtype I general purpose electric motor and that is "configured as 1 of several distinct configurations, such as "Design C" or "U–Frame" construction. (codified at 42 U.S.C. 6311(13)(A)–(B)). NEMA asked DOE to clarify how it would interpret the clause "configured as 1 of" in EISA 2007's definition of general purpose electric motor (subtype II). Otherwise, according to NEMA, it is possible that a general purpose motor could be configured in a manner that uses combinations of the various configurations specified by EISA 2007, that is, a Design C motor could be constructed in a U-frame. (NEMA, No. 12 at p. 11)

In view of the above, DOE proposes first to clarify the definition of "electric motor" by describing what an electric motor is and what it does, rather than listing categories of covered electric motors. Second, DOE proposes to clarify the definition of "general purpose electric motor (subtype I)" by specifying certain design and performance elements. Third, DOE proposes to clarify the relationship between a general purpose electric motor subtype I and a general purpose electric motor subtype II.

NEMA commented that the definition of "general purpose electric motor (subtype I)" in the December 2008 NOPR is confusing because the only identifying characteristic is that the motor is "constructed for use in general purpose applications or can be used in most general purpose applications." Further, NEMA asserted that design characteristics (such as T-frame, single speed, foot-mounting, polyphase, squirrel-cage induction motor, Design A and B, continuous rated, operating on 230/460 volts or constant 60 Hertz line power, *etc.*), which were essential elements under the EPAct 1992 definition of "electric motor," are not included in the EISA 2007 definition. In addition, NEMA commented that when [in 1999] DOE originally codified regulations for electric motors into 10 CFR part 431, it determined that motors designed in accordance with IEC standards, and which could be used in the same general purpose applications as NEMA motors, be included as covered equipment. 61 FR 60442–43, 60449–50 (November 27, 1996) and 64 FR 54131. Whereas the definition for "general purpose electric motor (subtype I)," proposed in the December 2008 NOPR, failed to include IEC motors of similar design and use, NEMA requested that DOE explicitly include equivalent IEC motors as covered equipment. (NEMA, No. 12 at pp. 9 and 11)

In view of the above comments, DOE is proposing to clarify what constitutes a "general purpose electric motor (subtype I)" by referencing the enumerated design and performance elements under the definition of "electric motor," set forth in EPCA, as amended by EPAct 1992 and codified in 10 CFR 431.2 (January 1, 2000). DOE would also include references to IEC standards to clarify that IEC-equivalent electric motors are subject to energy conservation standards. DOE requests comment on the following proposed definition for "general purpose electric motor (subtype I)":

General purpose electric motor (subtype I) means a general purpose electric motor that:

(1) Is a single-speed induction motor (MG1);

(2) Is rated for continuous duty (MG1) operation or for duty type S1 (IEC);

(3) Contains a squirrel-cage (MG1) or cage (IEC) rotor;

(4) Has foot-mounting that may include foot-mounting with flanges or detachable feet;

(5) Is built in accordance with NEMA T-frame dimensions (MG1) or their IEC metric equivalents (IEC);

(6) Has performance in accordance with NEMA Design A (MG1) or B characteristics or equivalent designs such as IEC Design N (IEC);

(7) Operates on polyphase alternating current 60-hertz sinusoidal power, and:

(i) Is rated 230 or 460 volts (or both) including motors rated at multiple voltages that include 230 or 460 volts (or both), or

(ii) Can be operated on 230 or 460 volts (or both); and

(8) Includes, but is not limited to, explosion-proof construction.

Terms in this definition followed by the parenthetical "MG1" must be construed with reference to provisions in NEMA Standards Publication MG1–2009 and elements followed by the parenthetical "IEC" must be construed with reference to the IEC Standards. 10 CFR part 431, subpart B applies to general purpose electric motors (subtype I) even if the NEMA or IEC-equivalent frame size or design element has been discontinued or is discontinued in the future.

To be consistent with the proposed definition of "electric motor" and corresponding use of the term "general

purpose electric motor" in the definition of "general purpose electric motor (subtype I)," DOE proposes to amend the definition of "general purpose motor" in 10 CFR 431.12 by adding the word "electric" in front of the word "motor" to clarify that a general purpose motor is a type of electric motor. Furthermore, DOE proposes to update references to NEMA MG1, from NEMA MG1–1993 to NEMA MG1–2009 in this definition.

DOE distinguishes between a general purpose electric motor subtype I and subtype II based on whether the motor is configured to have one or more of the design or performance elements listed in the definition of general purpose electric motor (subtype II) at 42 U.S.C. 6311(13)(B). For example, a subtype I motor could be built in accordance with NEMA T-frame dimensions and could have the performance characteristics of a NEMA Design A motor. In contrast, a motor built with all of the same design elements as the above mentioned motor but with the performance characteristics of a NEMA Design C motor would be a subtype II motor. To clarify this interpretation of the statutory definition of "general purpose electric motor (subtype I)," DOE proposes to modify the introductory text of the definition to read, "means any general purpose electric motor that incorporates design elements of a general purpose electric motor (subtype I) but, unlike a general purpose electric motor (subtype I), is configured in one or more of the following ways." For clarification, DOE is also proposing to add references to MG1 and IEC standards in the definition of "general purpose electric motor (subtype II)" to clarify the terms "U-frame," "NEMA Design C," and "vertical solid shaft normal thrust motor."

Finally, DOE has received inquiries regarding whether motors designed in accordance with IEC standards are covered motors under EPCA, as amended by EISA, if there is no longer a NEMA MG1-equivalent design standard. Specifically, manufacturers are requesting guidance as to whether IEC 100 millimeter frame motors are covered motors under EPCA, as amended by EISA 2007, because the equivalent NEMA 160 frame size was discontinued as a standard NEMA frame. Before EISA 2007 was enacted, DOE addressed this question in the 1996 electric motors test procedure NOPR. 61 FR 60440, 60443 (November 27, 1996). At that time, DOE considered whether the proposed scenario was covered under the then-current definition of "electric motor."[6] The Department tentatively decided that the IEC 100 millimeter frame motor was not covered by EPCA because the "electric motor" definition required the motor to be a T-frame motor as defined in NEMA MG1–1987, but the NEMA T-frame motor that was equivalent to an IEC 100 millimeter frame motor had been discontinued.

DOE has reassessed this previous preliminary determination in light of the EISA 2007 amendment that struck the definition of "electric motor" relied upon in the above analysis, and today's proposal to include references to IEC standards to clarify that IEC-equivalent electric motors are subject to energy conservation standards. Upon reconsideration of the issue, DOE proposes that IEC 100 millimeter frame motors, and other electric motors built to IEC standards, that otherwise meet the proposed definition of "general purpose electric motor (subtype I)" are covered motors under EPCA, even though the NEMA-equivalent frame size has been discontinued.

C. Definition of NEMA Design B Motor

In the December 2008 NOPR, DOE proposed to adopt a definition for the term "NEMA Design B, general purpose electric motor." 73 FR 78235. This definition was based on the definition of general purpose electric motor in paragraph 1.19.1.2, "Design B," of NEMA MG1–2006 Revision 1, with three changes. First the proposed definition removed the reference to 50 hertz and corresponding performance characteristics because the EISA 2007-prescribed efficiency standards for "NEMA Design B, general purpose electric motors" at 42 U.S.C. 6313(b)(2)(D) cover only 60-hertz motors. (*See* NEMA MG–1 (2006) Table 12–11) Second, it limited the maximum rated slip at rated load to less than 5 percent for motors with fewer than 10 poles, because the EISA 2007-prescribed energy conservation standards only cover 2-, 4-, 6-, and 8-pole motors and, according to the footnote to MG1–2006 paragraph 1.19.1.2, motors with 10 or more poles are permitted to have slip slightly greater than 5 percent. Third, it corrected the referenced 60-hertz locked-rotor current paragraph from 12.35.3 to 12.35.1, because there is no paragraph12.35.3 in MG1–2006 and the table under paragraph 12.35.1 contains the maximum currents associated with a locked rotor.

Several interested parties expressed concern over DOE's proposed definition for a NEMA Design B, general purpose electric motor. NEMA and Baldor urged DOE not to change the NEMA MG1 definition of Design B where it refers to MG1–12.35.[2] for 50 hertz, stating that the industry definition has existed for many years and should be maintained, and that EISA 2007 does not explicitly limit coverage to 60 hertz. (Baldor, Public Meeting Transcript, No. 8 at p. 159, NEMA, No. 12 at p. 10) NEMA also noted that Table 12–11 of NEMA MG1 (the applicable efficiency standards for NEMA Design B, general purpose electric motors) applies both to 60-hertz and 50-hertz rated motors. In sum, NEMA requested that DOE incorporate the definition of NEMA Design B, general purpose electric motor from NEMA MG1–2006 in its entirety and refer to paragraph 1.19.1.2 of NEMA MG1–2006. Notwithstanding this request, NEMA asserts that it is not condoning the inclusion of efficiency standards for 50-hertz motors in 10 CFR part 431. NEMA also commented that even though NEMA Design B motors are a subset of general purpose electric motor (subtype I), if DOE deems it necessary, NEMA would support adding a separate definition for NEMA Design B general purpose electric motor in § 431.12, as long as it was clearly classified as a general purpose electric motor (subtype I) with some specific characteristics. (NEMA, No. 12 at p. 10)

In addition, the Northwest Energy Efficiency Alliance (NEEA) agreed that it could see no benefit to making changes to an industry-wide and well-accepted definition for a NEMA Design B general purpose motor that includes 50-hertz motors and energy efficiency levels for 8-pole motors. NEEA recommended that DOE adopt the NEMA MG1 1.19.1.2 definition without amending it. (NEEA, No. 10 at pp. 2–3)

In response, due to the NEMA MG1 technical error in referencing section 12.35.3 for 60 Hz motors, DOE cannot simply adopt or reference the NEMA MG1 1.19.1.2 definition for Design B without any amendments, as suggested by NEMA and NEEA. Furthermore, it is common and within DOE's authority to adopt a long-standing industry definition and adapt the definition to make it more precise for regulatory purposes.

Therefore, DOE intends to adopt a definition of NEMA Design B motor that includes corrections to the reference to section 12.35.1 of MG1. In addition, for consistency with the footnote to the definition in NEMA MG1–2009, DOE intends to maintain the limitation that the maximum rated slip at rated load to

[6] Section 340(13)(A) of EPCA, as amended, defined the term "electric motor" as "any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987."

less than 5 percent for only motors with fewer than 10 poles. DOE agrees with commenters that there is limited benefit to constraining the definition of NEMA Design B to only 60-hertz motors. Though DOE's proposed definitions of general purpose electric motor (subtype I) and (subtype II) limit those regulations to 60-hertz motors, DOE could consider expanding energy conservation standards to 50-hertz motors in the future. Including provisions for 50-hertz motors would maintain consistency with the industry definition and preserve DOE's flexibility to regulate electric motors covered under EPCA. In addition, DOE believes that it is inaccurate and inconsistent with industry practice to narrowly categorize NEMA Design B motors as only a subset of general purpose electric motor (subtype I). It is DOE's understanding that NEMA Design B motors can also fall under the category of general purpose electric motor (subtype II) (*e.g.,* a footless NEMA Design B motor), or other type of electric motor.

For all of these reasons, DOE proposes to adopt a broad definition of a NEMA Design B motor similar to that which was proposed for "NEMA Design B, general purpose electric motor" in the December 2008 NOPR with three revisions. First, DOE proposes to include provisions regarding 50 hertz motors. Second, DOE intends to modify the proposal to update the reference to "NEMA MG1–2006" to "NEMA MG1–2009." Third, DOE proposes to eliminate any reference to NEMA Design B motors necessarily being general purpose electric motors.

D. Fire Pump Motors Definition

EPCA section 342(b), as amended by section 313(b)(1)(B) of EISA 2007 (Pub. L. 110–140), prescribes energy efficiency standards for fire pump motors, which were subsequently codified at 10 CFR 431.25(d). 74 FR 12072. However, section 340(13) of EPCA, as amended by EISA 2007, does not define the term "fire pump motor." DOE proposed a definition for fire pump motors in its December 2008 NOPR to mean "a Design B polyphase motor, as defined in NEMA MG1–2006, rated 500 horsepower (373 kW) or less, 600 volts or less, and that is intended for use in accordance with the National Fire Protection Association (NFPA) Standard 20–2007, 'Standard for the Installation of Stationary Pumps for Fire Protection.'" 73 FR 78235. In the NOPR, DOE based the definition primarily on the scope of the Underwriters Laboratories (UL) Standard 1004A–2001, "Fire Pump Motors," and NFPA Standard 20–2007. Further, DOE proposed to make two modifications to the definition by inserting a publication date for the cited NFPA standard and correcting the title of NFPA Standard 20.

In response to the NOPR, NEMA raised concerns that fire pump motors should not be required to meet any efficiency standards because they are expected to operate on an emergency basis for a relatively short time with virtually no opportunity to save a significant amount of energy. Further, NEMA asserted that motors identified as "fire pump motors" are recognized by the industry as both EPAct 1992 electric motors or EISA 2007 general purpose electric motors (subtype I) and, therefore, should not be listed as a separate motor type under the electric motor definition as proposed in the December 2008 NOPR. Notwithstanding this argument, NEMA supports DOE adding the definition of "fire pump motor" to 10 CFR 431.12, provided that it is characterized as being a "general purpose electric motor (subtype I)" with some specific characteristics. (NEMA, No. 12 at pp. 8–9) Additionally, NEMA noted that the UL Standard 1004A–2001, "Fire Pump Motors," has been replaced by UL Standard 1004–5 (2008), and that DOE should reference the newest standard if it is necessary to define a fire pump motor. (NEMA, No. 12 at pp. 8–9)

Similarly, other attendees at the January 29, 2009, public meeting questioned the proposed definition and scope of coverage for fire pump motors. (Baldor, Public Meeting Transcript, No. 8 at pp. 112–113, 116–119, 133–136)

DOE examined UL Standard 1004–5 (2008), including paragraph 1.2, which reads as follows: "Standard covers Design B polyphase motors, as defined in NEMA MG 1, Motors and Generators, rated 500 horsepower (373 kW) or less, 600 volts or less, that are intended for use in accordance with NFPA 20, the Standard for the Installation of Centrifugal Fire Pumps." DOE then compared UL Standard 1004–5 (2008) with the comparable text in UL Standard 1004A–2001, which contains virtually identical language and concludes that the documents share the same scope of coverage. In today's SNOPR, DOE proposes to further clarify that a fire pump motor is an electric motor that is required to meet certain safety and performance requirements set forth by NFPA Standard 20–2010, section 9.5, and UL Standard 1004–5 (2008).

However, similar to DOE's above proposal to adopt a broad definition for a NEMA Design B motor, DOE does not agree that fire pump motors are necessarily a subset of general purpose electric motors (subtype I) or general purpose electric motors (as defined in this SNOPR). It is DOE's understanding that all fire pump motors, irrespective of whether they are considered general purpose or meet the design constraints of general purpose electric motor (subtype I), would be subject to energy conservation standards. For all of these reasons, in today's SNOPR DOE proposes to define a fire pump motor as an electric motor that is required to meet the performance and construction requirements set forth by NFPA Standard 20–2010, section 9.5, and UL Standard 1004–5 (2008).

E. Fire Pump Motor Coverage

Section 313(b)(1)(B) of EISA 2007 amends EPCA section 342(b), to prescribe energy conservation standards for fire pump motors by referring to NEMA MG 1–2006 Table 12–11. That provision reads as follows:

(B) FIRE PUMP MOTORS—Each fire pump motor manufactured (alone or as a component of another piece of equipment) after the 3-year period beginning on the date of enactment of the Energy Independence and Security Act of 2007 shall have nominal full load efficiency that is not less than as defined in NEMA MG–1 (2006) Table 12–11.

(42 U.S.C. 6313(b)(2)(B))

On March 23, 2009, DOE published a technical amendment to 10 CFR part 431 to adopt the energy conservation standards for fire pump motors prescribed by EISA 2007. 74 FR 12058, 12072. The technical amendment codified the energy conservation standards for fire pump motors, contained in Table 12–11 of NEMA Standards Publication MG1–2006 (and Revision 1 to MG1–2006) which contains energy efficiency values from 1 through 500 horsepower and covers 2-pole, 4-pole, 6-pole, and 8-pole, open and enclosed fire pump motors. 74 FR 12061, 12072.

During the January 29, 2009, public meeting there appeared to be some confusion over whether the covered range of horsepowers for fire pump motors is 1–200 horsepower or 1–500 horsepower. (GE, Public Meeting Transcript, No. 8 at p. 147; Navigant Consulting, Public Meeting Transcript, No. 8 at pp. 147–148; WEG, Public Meeting Transcript, No. 8 at pp. 148–149; NEMA, No. 12 at pp. 8–9; NEEA, No. 10 at p. 2). Further, Baldor alluded to an excerpt of the language under EPCA section 342(b), as amended by section 313(b)(1)(B) of EISA 2007, which provides "GENERAL PURPOSE

ELECTRIC MOTORS (SUBTYPE I).—Except as provided in subparagraph (B), each general purpose electric motor (subtype I) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower." (42 U.S.C. 6313(b)(2)(A)) Baldor opined that whether a fire pump motor covered under 42 U.S.C. 6313(b)(2)(B) was limited to the same 1–200 horsepower range as a general purpose electric motor (subtype I) was a matter of statutory interpretation. (Baldor, Public Meeting Transcript, No. 8 at pp. 112–113,145, 149–50).

DOE understands that EISA 2007 section 313(b)(1)(A) sets energy conservation standards for general purpose electric motors (subtype I) with a rating of 1 through 200 horsepower and clearly excepts fire pump motors from this subsection. (42 U.S.C. 6313(b)(2)(A)) EISA 2007 section 313(b)(1)(B), which prescribes energy conservation standards for fire pump motors, does not, however, explicitly limit the standard based on a motor's horsepower rating. (42 U.S.C. 6313(b)(2)(B)) Instead, fire pump motor manufacturers are required to meet the requirements of NEMA Standard MG1–2006 Table 12–11, which covers 1 through 500 horsepower motors. (42 U.S.C. 6313(b)(2)(B)) Consequently, DOE continues to believe that energy conservation standards DOE promulgated in its March 23, 2009, technical amendment are the logical result of provisions set forth in EISA section 313(b)(1)(B) and cannot be construed as being a subset of subsection EISA section 313(b)(1)(A) or subject to any constraints contained in subparagraph (A), including horsepower rating constraints. DOE, therefore, proposes in today's SNOPR that fire pump motor energy conservation standards apply to fire pump motors rated 1 through 500 horsepower.

F. Energy Conservation Standards for Electric Motors

In addition to the above comments submitted about the definitions for "electric motor," "general purpose electric motor (subtype I)," "general purpose electric motor (subtype II)," "NEMA Design B motor," and "fire pump motor," commenters also submitted comments (shown below) requesting clarification of the tables of electric motor efficiency standards in 10 CFR 431.25.

DOE's current regulations require manufacturers of "electric motors" to comply with the energy efficiency levels in 10 CFR 431.25(a), which were prescribed by EPAct in 1992, but do not specify a sunset date. Section 313(b) of EISA 2007 amended EPCA to prescribe energy conservation standards for general purpose electric motors (subtype I and subtype II), with a compliance date of December 19, 2010. (42 U.S.C. 6313(b)(2)) These standards, and the compliance date, were subsequently codified at 10 CFR 431.25(c) and (e) respectively. Because EPAct does not specify an apparent terminus for the 1992 efficiency levels, NEMA argued that this was potentially confusing for manufacturers to decide which provisions apply—the EPAct 1992 levels or the EISA 2007 levels. Consequently, NEMA requested guidance on the proper energy conservation standards for general purpose electric motors (subtype I). (NEMA, No. 12 at p. 9) To address this issue, DOE proposes to delete 10 CFR 431.25(a) to clarify that the standards in this section no longer apply.

In view of the above statutory history and relationship of EPCA to EPAct 1992 and to EISA 2007, DOE believes that the electric motor standards prescribed by EPAct 1992 apply only to general purpose electric motors (subtype I). DOE proposes that electric motors covered under EPAct 1992 (general purpose electric motor (subtype I)), which are manufactured or imported prior to December 19, 2010, were subject to the EPAct 1992 energy conservation standards codified at 10 CFR 431.25(a). Further, DOE proposes that a general purpose electric motor (subtype I) that is manufactured or imported on or after December 19, 2010, is subject to the EISA 2007 energy conservation standards that are codified at 10 CFR 431.25(c).

In addition, in the December 2008 NOPR, DOE did not explicitly state that a NEMA Design B general purpose electric motors that otherwise meets the definition of a general purpose electric motors (subtype I) is subject to the EISA 2007 energy conservation standards that are codified at 10 CFR 431.25(c) NEMA expressed concern in responding to the December 2008 NOPR that given the proposed definitions and structure of 10 CFR 431.25, NEMA Design B general purpose electric motors rated 1 horsepower or greater, but not greater than 200 horsepower, would appear to remain at the levels established by EPAct 1992 (codified at 10 CFR 431.25(a)).

To clarify the scope of energy conservation standards for NEMA Design B motors from 1 through 200 horsepower, DOE proposes two modifications of 10 CFR 431.25. First, because general purpose electric motors (subtype I) include certain NEMA Design B motors, DOE proposes to specify that NEMA Design B motors, rated 1 through 200 horsepower, that are also general purpose electric motors (subtype I), are subject to energy conservations standards in 10 CFR 431.25(c). Second, and similarly, as general purpose electric motors (subtype II) include certain NEMA Design B motors (*e.g.,* footless motors), DOE proposes to specify that NEMA Design B motors, rated 1 through 200 horsepower, that are also general purpose electric motors (subtype II), are subject to energy conservation standards in 10 CFR 431.25(e).

EISA 2007 also established energy conservations standards for "NEMA Design B, general purpose electric motors" rated greater than 200 horsepower but less than or equal to 500 horsepower, which were later codified into the current version of 10 CFR 431.25(f). NEMA asserts that the motor industry recognizes a "NEMA Design B, general purpose electric motor" as a specific group of motors that fit the definition of either "electric motor" from EPAct 1992 or "general purpose electric motor (subtype I)" from EISA 2007.

DOE notes that EISA 2007 did not define "NEMA Design B, general purpose electric motor," "NEMA Design B motor," or "general purpose electric motor." In the absence of any statutory definition, DOE views the regulatory definition of "general purpose motor" that was in place on EISA2007's enactment date as the proper definition for "general purpose electric motor" as used in the term "NEMA Design B, general purpose electric motor." The "general purpose motor" definition in place at the time of EISA's enactment is the same as the "general purpose electric motor" definition proposed today, with minor differences for standards updates. DOE proposes that this definition, read in conjunction with the definition of "NEMA Design B" proposed in today's SNOPR, delineates the motors regulated under 10 CFR 431.25(f). DOE realizes that this interpretation could potentially include NEMA Design B motors that are general purpose electric motors that do not meet the proposed definition of "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)." It is DOE's understanding, however, that there are few, if any, NEMA Design B motors that would be neither a subtype I or subtype II general purpose electric motor. DOE requests comment on this specific issue. Based on these comments and any additional information collected, DOE may revise this proposed approach.

NEMA also noted that the energy efficiency standards tables contained in 10 CFR 431.25(c)–(f) list motor ratings

in horsepower but not equivalent kilowatts. NEMA requested that DOE include kilowatt power ratings in the newly codified tables that promulgate the EISA 2007 efficiency standards. (NEMA, No. 12 at p. 9) Without this change, NEMA raised concerns that metric-rated motors would not be covered. To ensure that the tables under 10 CFR 431.25(c)–(f) apply to metric-rated, kilowatt-equivalent motors, DOE proposes to amend the tables to provide an equivalent kilowatt rating for each horsepower. Although the EISA 2007 definition for general purpose electric motor (subtype I and subtype II) does not specifically mention motors rated in kilowatts, as motors are rated under (IEC) standards, DOE believes that the statute covers IEC motors that are identical or equivalent to motors included in the statutory definition. DOE understands that IEC motors generally can perform the identical functions of EISA-covered electric motors. Comparable motors of both types provide virtually identical amounts of rotational mechanical power, and generally can operate or provide power for the same pieces of machinery or equipment. A given industrial central air conditioner, for example, could operate with either an IEC or NEMA motor with little or no effect on performance. Providing equivalent kilowatt/horsepower ratings would be consistent with the EPAct 1992 levels that are codified at 10 CFR 431.25(a), and would clarify the applicability of these standards levels.

Finally, DOE proposes to clarify in 10 CFR 431.11 that the electric motors covered under subpart B are not small electric motors. DOE believes that this clarification is necessary because electric motors (covered under 10 CFR part 431, subpart B) and small electric motors (covered under 10 CFR part 431, subpart X) are separate and unique covered equipment with particular regulatory requirements.

G. References to International Electrotechnical Commission, National Electrical Manufacturers Association, Institute of Electrical and Electronics Engineers, and Canadian Standards Association Standards for Electric Motors

After EISA 2007 struck and replaced the definition of electric motor under 42 U.S.C. 6311(13), DOE subsequently proposed in the December 2008 NOPR to remove the corresponding test standards incorporated by reference under 10 CFR 431.15. These test standards helped clarify critical elements in the definition of electric motor under 10 CFR 431.12. 73 FR 78227. The standards incorporated by reference included IEC Standards 60034–1 (1996), 60050–411 (1996), 60072–1 (1991), and 60034–12 (1980).

NEMA commented that when DOE adopted the content of EPAct 1992 into 10 CFR part 431, it recognized the necessity of including equivalent motors designed in accordance with IEC standards that could be used in the same applications as motors designed in accordance with NEMA MG1 standards. Although the IEC standards do not particularly identify "general purpose motors," motors built according to IEC specifications can be used interchangeably with NEMA motors in most general purpose applications. Because of this fact, NEMA argued that the applicable IEC standards should be retained in 10 CFR part 431, and that motors constructed in accordance with those standards in metric-equivalent ratings should be considered as covered equipment under 10 CFR part 431. (NEMA, No. 10 at p. 10)

DOE previously took such an approach when addressing IEC metric motors in the final test procedure rule for electric motors at 64 FR 54142 (October 5, 1999). The inclusion of parenthetical references to the IEC standards in the codified definition of "electric motor" under 10 CFR 431.2 (2000) clarified the applicability and coverage of IEC (*i.e.* metric-equivalent) electric motors. For example, under the EPAct 1992 definition of "electric motor," a motor had to be "continuous rated." DOE later clarified "continuous rated" in 10 CFR 431.2 (2000) to mean "is rated for continuous duty (MG1) operation, or is rated duty type S1 (IEC)." Although the then-statutory definition did not explicitly mention IEC motors, DOE proposed that the term "continuous rated" apply to those electric motors that are equivalent to the "continuous duty operation" rating denoted by the parenthetical "MG1" or the equivalent IEC duty type "S1." (*See* 61 FR 60440, 60442 (November 27, 1996) where it states that "[A]lthough the statutory definition of 'electric motor' does not specifically mention IEC motors, the Department believes that the Act covers IEC motors that are identical or equivalent to motors included in the statutory definition.") DOE later codified this approach at 10 CFR 431.2. 64 FR 54143 (October 5, 1999).

DOE believes that EISA 2007 provides the same breadth of coverage over IEC motors that are identical or equivalent to electric motors built in accordance with MG1. As discussed earlier in this SNOPR, DOE is proposing a revised definition of "general purpose electric motor (subtype I)" and "general purpose electric motor (subtype II)" which would incorporate IEC-equivalent motors. Thus, DOE proposes to maintain IEC standards incorporated by reference in 10 CFR 431.15. In addition, DOE proposes to adopt the updated versions of two of the IEC standards, IEC Standards 60034–1 and 60034–12, to the 2004 and 2007 versions, respectively.

NEMA also notes that a source to obtain IEC standards does not appear in 10 CFR 431.15(d). (NEMA, No. 10 at p. 10) In response to NEMA's comment, DOE proposes to reorganize and update 10 CFR 431.15 to include each standard incorporated by reference with corresponding updated information about how to obtain copies of these documents.

In addition, DOE notes that several electric motor definitions and sections of 10 CFR part 431 reference outdated standards, such as NEMA MG1–1993, IEEE 112–1996 Test Method B, CAN/CSA C390–93 (Test Method 1). In this SNOPR, DOE proposes to update the following references throughout 10 CFR part 431 to be consistent with current industry standards: NEMA MG1–2009, IEEE 112–2004 Test Method B, and CAN/CSA C390–10. DOE believes that the exceptions to IEEE 112–1996 Test Method B contained in paragraph (2) of appendix B to subpart B, 2. Test Procedures, are contained in the updated version of IEEE 112–2004 Test Method B, although DOE accepts comments on this assessment. DOE does not believe that the updated standards and test procedures will adversely affect the measured losses and determined efficiency of an electric motor, nor significantly change the meaning of a definition. Finally, NEMA recently provided comments on the electric motors framework document indicating that while the test data collection methods for the updated versions of IEEE 112–2004 Test Method B and CAN/CSA 390–10 are the same, there are differences in the methods in which the efficiency is determined from the data.[7] (NEMA, No. 0013 at p. 2) DOE requests comment on this issue.

H. National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program Handbook 150–10 Update and Checklist

In the December 2008 NOPR, DOE proposed updating the current reference to the 1995 edition of the NIST

[7] The written comments cited in this paragraph were submitted to the docket of the energy conservation standards rulemaking for electric motors (refer to *http://www.regulations.gov,* Docket No. EERE–2010–BT–STD–0027; RIN number 1904–AC28).

Handbook 150–10 to the 2007 edition. 73 FR 78228. Although following the NIST/NVLAP Handbook is not a required part of the electric motors test procedure, the Handbook provides important guidance for assuring testing laboratory competency and is used by test facilities seeking accreditation under 10 CFR 431.18, 431.19, and 431.36(a)(2).

At the January 30, 2009, public meeting, Baldor Electric expressed concern that an update to NIST/NVLAP Handbook 150–10 could be problematic because it refers to test methods that are different from the updated test methods proposed by DOE. For example, the NIST/NVLAP Handbook 150–10 refers to proficiency in IEEE 112–1996 Test Method B and CSA C390–93 Test Method 1 to become an accredited laboratory. (Baldor, Public Meeting Transcript, No. 8 at p. 178) Because these industry test methods have been revised, DOE proposed to update 10 CFR 431.16, appendix A to subpart B, and 10 CFR 431.15 to be consistent with current industry practice. 73 FR 78228. Also, DOE proposed that NIST review this matter and consider updating the industry test methods referenced in its NIST/NVLAP Handbook 150–10.

Subsequently, NIST reviewed its Handbook 150–10 and issued a formal Laboratory Bulletin on March 19, 2009 (Lab Bulletin LB–42–2009) about the Efficiency of Electric Motors Program. The Lab Bulletin made a series of updates and corrections. Although NIST did not update its references to CSA C390–93 Test Method 1, DOE and NIST have evaluated the differences between the 1993 version and the updated version of the Canadian standard and have initially determined that there is no substantive difference between the two standards that would result in a significant change in measured efficiency. Therefore, DOE is proposing to adopt NIST/NVLAP Handbook 150–10 that references IEEE 112–2004 (November 2001), CSA C390–10 (March 2010), and NEMA MG1–2009 (April 2009).

A second issue relating to NIST/NVLAP Handbook 150–10 was raised both at the January 30, 2009 public meeting and in subsequent written comments. Baldor commented that while the NIST/NVLAP 150–10 Handbook is available online, Baldor has had difficulty locating the current checklist, formerly in the 1995 version of the handbook, which systematically lists the laboratory testing requirements and the applicable test procedures. Further, the 2007 edition of the handbook does not address the test procedure used for accrediting a laboratory. (Baldor, Public Meeting Transcript, No. 8 at pp. 166–167) NEMA commented that it found a "significant difference" between the 1995 and 2007 editions of the NIST/NVLAP Handbook 150–10. NEMA noted that the 1995 edition provides (1) information on the required accuracy of the test equipment, (2) details of the test procedure to be used for testing induction motors, and (3) a checklist for the purpose of evaluating the test facility. NEMA expressed concern that the 2007 edition does not contain that technical information. NEMA noted that according to clause 1.6.2 of NIST/NVLAP Handbook 150–10 (2007), all NVLAP programs use a NIST Handbook 150 Checklist, but the document is not easily found on the NIST Web site at *http://www.nist.gov/index.html.* NEMA commented that DOE should not reference the 2007 edition of NIST/NVLAP Handbook 150–10 until the NIST/NVLAP Handbook 150–10 Checklist is available to the public and DOE has examined it to be certain it contains the same information about the accuracy of test equipment and the procedure for testing that is in the 1995 edition. NEMA requests that if DOE finds the checklist to be a proper substitute for the provisions in the 1995 edition, then DOE should update 10 CFR 431.15(e)(2)(i) to refer to the 2007 edition of NIST/NVLAP Handbook 150–10 and add the 2007 Checklist 150–10 to the list of documents incorporated by reference. (NEMA, No. 12 at pp. 11–12)

DOE consulted with NIST on this matter and learned that the NIST/NVLAP Handbook 150–10 (2007) Checklist is available on the NIST Web site at: *http://ts.nist.gov/Standards/Accreditation/upload/NIST_HB_150_10_Checklist.pdf.* Although there are minor differences between the 1995 and 2007 Checklists, DOE is satisfied with the rigor and requirements presented in the 2007 Checklist, which NIST has established as the requirements for accreditation of a laboratory under NIST/NVLAP Handbook 150–10. However, DOE does not agree with NEMA's recommendation to incorporate by reference the NIST/NVLAP Handbook 150–10 (2007) checklist into 10 CFR 431.15(e). The checklist is not a requirement of the test procedure itself, but rather a document used to accredit a testing facility as being capable of conducting the necessary tests for evaluating the energy efficiency of an electric motor. Finally, while DOE is aware that the 2007 version of the checklist references IEEE 112–1996 and MG1–1993, DOE considers these referenced documents to be updated by NIST Lab Bulletin LB–42–2009, issued on March 19, 2009. DOE has also asked NIST to further update the referenced standards to include IEEE 112–2004, CSA C390–10, and NEMA MG1–2009.

I. Appendix A to Subpart B of Title 10 of the Code of Federal Regulations Part 431

Section 313(a)(2) of EISA 2007 amended EPCA section 340(13)(A) to set forth a new definition of "electric motor," which included motors not previously covered under EPCA, such as a footless motor, close-coupled pump motor, and a vertical solid shaft normal thrust motor. Prior to EISA 2007, the Policy Statement, under appendix A to subpart B of 10 CFR part 431, provided interpretive guidance as to which types of motors DOE viewed as covered under EPCA and how DOE would apply energy conservation standards to electric motors that are components of certain equipment. To accommodate the changes to section 340(13)(A) of EPCA that EISA 2007 introduced, which removed much of the basis for DOE's previous interpretive guidance, in the December 2008 NOPR, DOE proposed to delete the contents of appendix A to subpart B, and replace the existing policy statement with the term "[Reserved]." DOE also proposed to maintain the outline structure of this subpart should DOE decide in the future to clarify the scope of covered electric motors in its regulations. 73 FR 78228 and 78237.

During the January 29, 2009, public meeting, Baldor commented that removing the guidelines from appendix A to subpart B of 10 CFR part 431 would result in no guidance at present and leave open the possibility to greatly expanded guidance in the future. (Baldor, Public Meeting Transcript No. 8, p. 118)

To address this possibility, DOE is proposing, as an alternative, to revise the contents of appendix A to provide guidance that corresponds with EISA 2007 regarding general purpose electric motors. As guidance, appendix A represents DOE's interpretation of existing statutes and regulations but does not, and is not intended to, have the force and effect of law.

Specifically, DOE proposes to eliminate references to enactment dates that are no longer applicable and update the scope of coverage to include general purpose electric motors (subtype I) and general purpose electric motors (subtype II). DOE is not proposing to provide guidance in-line with EISA 2007 for fire pump or NEMA Design B motors because DOE does not think such guidance is necessary at this time,

although DOE may add such guidance at a future date.

In addition, the Policy Statement addresses the bounds of standard shaft dimensions applicable to general purpose electric motors (subtype I) and general purpose electric motors (subtype II). It is DOE's understanding that NEMA Standard MG1–2009 and IEC Standard 60072–1 (1991) specify tolerances for the shaft extension diameter and keyset that relate to the fit between the shaft and the device mounted on the shaft. DOE is aware that shafts of special diameter, length, or design are often provided at a customer's request for use in particular applications. However, there are electric motors with non-standard shafts which could be used in most general purpose applications and would then be considered "general purpose electric motors (subtype I)" and "general purpose electric motors (subtype II)." DOE has received inquiries regarding whether motors with shaft designs that are not necessarily in conformance with the standard shaft types and dimensions in NEMA MG1 or IEC 60072–1 are covered under EPCA. (Baldor, No. 16; WEG, No. 17) In response to such inquiries and in view of possible confusion in the marketplace, DOE is proposing to add guidance on shaft diameter, length, shoulder location, and special designs under section III of appendix A to subpart B of 10 CFR part 431.

DOE's guidance specifies the range of variation in motor characteristics beyond which DOE interprets a motor to no longer be general purpose for some specific technical design features. DOE provides this guidance to help avoid market conditions where motor manufacturers and manufacturers of equipment using motors avoid increases in motor efficiency by making technical changes in motor characteristics that do not make substantial changes in motor application or use. DOE considers an empirical test of whether a particular motor design variant can be used in many general purpose applications to be whether many users of general purpose motors might be willing to switch such motor design variants given a relatively modest price differential between a general purpose motor and the motor design variant.

Four general purpose motor design features that may technically be changed while maintaining the general purpose application of a motor include: (1) Shaft diameter, (2) shaft length, (3) shoulder location, and (4) special shaft design features. In the proposed regulatory text, DOE provides the following guidance on the amount of variation from standard characteristics that maintains the general purpose classification of a motor.

For shaft diameter, DOE provides guidance that any variation in the shaft diameter between the standard shaft diameter of the next lower and higher frame numbers series maintains the general purpose classification of a motor.

For shaft length, DOE provides guidance that any shaft length between and inclusive of 0.5 to 1.25 times the standard shaft length of the motor maintains the general purpose classification of the motor.

For shoulder location, DOE provides guidance that an increase less than or equal to 25% in either the "BA" (MG1) or "C" (IEC) dimensions of the standard motor frame dimensions maintains the general purpose classification of the motor.

For special shaft designs, DOE provides guidance that the special shaft designs of a flat section in shaft (for pulley mounting), and shafts with a threaded hole maintain the general purpose classification of the motor. Alternatively, DOE is proposing guidance that shafts with threads on the outside of the shaft or a stepped shaft do not currently maintain their general purpose classification. If DOE receives information that manufacturers are switching to motors with outside thread and stepped shaft design variants to avoid efficiency improvements, then DOE may change the guidance to classify motors with outside threads and stepped shafts as general purpose electric motors.

J. Definition of Small Electric Motor

Subsequent to the publication of the July 7, 2009, small electric motor test procedures final rule (74 FR 32059), Baldor expressed concern over the clarity of certain key terms contained within the statutory definition of a small electric motor, asking DOE to clarify the statutory definition of "small electric motor" by interpreting key phrases in the definition, specifically: "General purpose," "induction motor," "two-digit frame number series," and "IEC metric equivalent motors." (Baldor, No. 15 at p. 2) Baldor suggested that DOE consider clarifying the definition by adding parenthetical identifiers "(MG1)" and "(IEC)" to the definition after each of these four key phrases to indicate the industry reference from which DOE interprets the meaning of that phrase. (Baldor, No. 15 at p. 2) These citations would then be expanded upon in the second paragraph of the definition by providing explicit references to the relevant sections of these industry documents. (Baldor, No. 15 at pp. 2–3)

DOE is currently involved in litigation regarding the final rule on energy conservation standards for small electric motors. 75 FR 10874 (March 9, 2010). Because the definition of "small electric motor" is at issue in the litigation, it is inappropriate for DOE to respond to Baldor's concerns at this time.

K. Canadian Standards Association Test Procedures for Small Electric Motors

In the December 2008 NOPR, DOE proposed three test methods from which a manufacturer could select to measure the energy efficiency of its covered small electric motors: IEEE Standard 114, IEEE Standard 112, or CAN/CSA Standard C747–94. 73 FR 78223, 78238. The choice of test procedures was consistent with the choice of test methods for electric motors listed in 10 CFR 431.16, where a manufacturer could select either an IEEE or CSA test method for determining the efficiency of covered 1–200 horsepower electric motors. DOE adopted IEEE Standard 114–2001 for single-phase small electric motors and both IEEE Standard 112–2004 Test Method A and Test Method B in its final rule for small electric motors test procedures. 74 FR 32065–32066, 32073–74. Since IEEE Standard 112 Test Method A applies to polyphase small electric motors below 1 kilowatt (1.34 horsepower), DOE determined that Test Method A would apply to polyphase small electric motors rated at or below 1 horsepower, which is the first common horsepower rating below 1 kilowatt (1.34 horsepower). Similarly, IEEE Standard 112 Test Method B would be applicable to polyphase small electric motors rated greater than 1 horsepower. DOE also adopted CAN/CSA–C747–94 as an alternative test method for single-phase motors. In the small electric motors test procedure final rule, DOE stated that it was not adopting any alternative test methods for polyphase small electric motors based on CAN/CSA–747–94 or CAN/CSA–C390–10 Test Method 1 because there may be an inconsistency in the measured efficiency associated with units tested under IEEE Standard 112–2004 Test Method B and CAN/CSA–C747–94. 74 FR 32066.

In today's SNOPR, DOE proposes that a manufacturer may test according to: (1) CAN/CSA C747–09 as an alternative to IEEE Standard 112 Test Method A for polyphase small electric motors rated less than or equal to 1 horsepower (0.746 kilowatt); and (2) CAN/CSA–C390–10, as an alternative to IEEE Standard 112 Test Method B for polyphase small electric motors that

have a rating greater than 1 horsepower (0.746 kilowatt). DOE believes that using the CAN/CSA Standard C747–09 or CAN/CSA Standard C390–10 in this manner will result in consistent measurements of energy efficiency compared to the applicable IEEE Standard 112 and IEEE Standard 114 test methods adopted in the small electric motors final rule and helps promote harmonization of test methods internationally.

L. Small Electric Motor Represented Efficiency Value

In DOE's notice proposing energy conservation standards for small electric motors, the term "nominal full load efficiency" was defined as the arithmetic mean of the full load efficiency of a population of motors. DOE received numerous comments on this definition, all of which are summarized in its final rule on energy conservation standards for small electric motors. 75 FR 10874 (March 9, 2010). Ultimately, DOE agreed with comments made by NEMA and Baldor and concluded in its final rule that it was not bound to establish energy conservation standards in terms of nominal efficiency. Instead, DOE established energy conservation standards for small electric motors in terms of "average full load efficiency." 75 FR 10914.

At the NOPR public meeting for small electric motor energy conservation standards, held December 17, 2009, Baldor made several comments regarding DOE's proposed definition for "nominal full load efficiency" pertaining to small electric motors. 74 FR 61500 (November 24, 2009). First, Baldor commented that the proposed definition was too similar to the existing definition for "average full load efficiency" and that it differed from the definition in NEMA MG–1, which would confuse users of that voluntary industry guidance. (Baldor, Public Meeting Transcript, No. 20.4 at pp. 112, 126–27). 75 FR 10914 (March 9, 2010). Next, Baldor commented that the proposed definition provided no guidance for what constitutes a population of motors, and suggested that the term be clarified. (Baldor, Public Meeting Transcript, No. 20.4 at pp. 112–13) These two comments were echoed by NEMA in its written comments. (NEMA, No. 24 at pp. 10–16) Finally, Baldor commented that the proposed definition infers that the arithmetic mean of the full-load efficiencies of the population of motors is known and that the nominal full load efficiency must be specified to be equal to the arithmetic mean, which would provide no limit to the number of different values of efficiency that might be marked on nameplates. In other words, there are many populations or production runs of motors of identical design, wherein each motor could have a slightly different efficiency because of variations in materials, the manufacturing process, and testing equipment. Consequently, there could be no limit to the different arithmetic averages marked on small motor nameplates. As such, Baldor requested further clarification on the determination of any relationship between nominal full load efficiency and calculated efficiency. (Baldor, Public Meeting Transcript, No. 20.4 at pp. 114, 125) [8]

In response to the December 2008 NOPR about test procedures for small electric motors, NEMA also sought clarity on the use of the term "nominal full load efficiency." NEMA noted that DOE had not provided information on the value of efficiency for which test results are to be compared for the purpose of determining compliance. NEMA asked how DOE would require the full load efficiency to be represented on small electric motors, noting that motors are not marked with the average full load efficiency. (NEMA, No. 12 at p. 3).

In developing today's SNOPR, DOE considered the relevant comments submitted to the energy conservation standards and test procedures rulemakings. DOE recognizes that its standards for electric motors and small electric motors use different metrics—*i.e.* nominal full load efficiency (electric motors) and average full load efficiency (small electric motors). The nominal efficiency values for electric motors are based on a logical sequence of standard values in NEMA Standard MG1 Table 12–10 and is familiar to motor users. However, there is no comparable set of standardized values adopted by NEMA for small electric motors and there is no statutory requirement that efficiency standards for these motors be set in terms of their nominal full load efficiency. 74 FR 61431–32 (November 24, 2009).

As mentioned earlier, DOE established energy conservation standards in terms of "average full-load efficiency" in the final rule. 75 FR 10914, 10947 (March 9, 2010). The analyses and results supporting the final energy conservation standards levels for small electric motors were calculated using a metric of average efficiency and DOE in this SNOPR proposes procedures for reporting the average full load efficiency of motors, consistent with the conservations standards for small electric motors. With respect to the term "nominal full load efficiency," since this term is not used in the small electric motors standard, DOE proposes leaving the term undefined. If DOE amends this test procedure to measure the nominal full load efficiency of small electric motors, this change will alter the applicable metric and will require a change in the standard levels for small electric motors to reflect the change in the efficiency metric. (42 U.S.C. 6293(e)). However, DOE understands Baldor's concern to be primarily related to the ambiguity of the definitions proposed in the energy conservations standards NOPR and recognizes that the represented efficiency value has yet to be defined. Therefore, in this SNOPR, DOE proposes procedures for determining the represented efficiency for small electric motors where the represented efficiency is that efficiency that corresponds to a 5 percent increase in losses, compared to the tested efficiency of a random sample of five or more units of a basic model. A very specific technical issue on which DOE invites comment is whether the 5 percent margin between the losses of the represented efficiency and the losses corresponding to the sample average efficiency is large enough to assure that the population of motor basic models is at least as efficient as the represented efficiency.

M. Validation of the Small Electric Motor Alternative Efficiency Determination Method

Section 343(a)(2) of EPCA requires that test procedures prescribed for electric motors be "reasonably designed to produce test results which reflect energy efficiency," yet not be "unduly burdensome" to conduct. (42 U.S.C. 6314(a)(2)) As discussed in the December 2008 NOPR, DOE recognizes that manufacturers produce large numbers of basic models of small electric motors, numbering in the thousands. These large numbers are due in part to the frequency with which units are modified because of material price fluctuations which, in turn, often necessitate the development of new basic models.

In view of the substantial number of small electric motors that could be subject to an individual testing requirement for each basic model, in the final small electric motors test procedure rule, DOE adopted a certification program that consisted of an alternative efficiency determination method (AEDM). 74 FR 32067, 32073.

[8] The written comments cited in this paragraph were submitted to the docket of the small electric motors energy conservation standards rulemaking (Docket No. EERE–2007–BT–STD–0007; RIN number 1904–AB70).

An AEDM is a predictive mathematical model developed from engineering analyses of design data and substantiated by actual testing. It represents the energy consumption characteristics of one or more basic models. Before using an AEDM, a manufacturer must determine its accuracy and reliability through actual testing of a statistically valid sample of at least five basic models. (10 CFR 431.445) For each basic model, the manufacturer must test a sample size of at least five units selected at random according to the criteria adopted in section 10 CFR 431.445, "Determination of Small Electric Motor Efficiency." After validating an AEDM's accuracy, the manufacturer may use that AEDM to determine the efficiencies of other basic models of small electric motors without further testing.

In the December 2008 NOPR, DOE proposed guidance about the certification program for testing small electric motors, selecting units from a basic model, and applying the results of the actual testing to substantiate an AEDM. 73 FR 78223–24, 78238–39. Today, DOE proposes additional requirements that are consistent with the AEDM approach adopted for 1–200 horsepower electric motors. These proposals help clarify portions of the AEDM procedure adopted in the final rule for small electric motors. DOE invites comments from interested parties on these requirements for a manufacturer to substantiate the accuracy of its AEDM.

N. Small Electric Motor Nationally Recognized Certification Program

EPCA provides different requirements for determining the energy efficiency of regulated small electric motors (two-digit NEMA frame) and electric motors (three-digit NEMA frame). In particular, section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of "electric motors" to "certify, through an independent testing or certification program nationally recognized in the United States, that [any electric motor subject to EPCA efficiency standards] meets the applicable standard."[9] (42 U.S.C. 6316(c)) No such requirement for independent testing or certification applies to small electric motors.

In the December 2008 NOPR, DOE proposed to allow a manufacturer to self-certify its small electric motors (*i.e.,* not require "independent testing"), which DOE believes is consistent with the compliance certification requirements for other commercial products such as high-intensity discharge lamps and distribution transformers covered under section 346 of EPCA.

In its comments to the NOPR, NEMA observed that many small electric motors sold in the U.S. are also sold in Canada, and that Canadian regulatory entities are considering following DOE's lead in developing energy efficiency standards for small electric motors. (NEMA, No. 12 at p. 4) NEMA noted that because the only means to certify compliance for electric motors in Canada is through the CAN/CSA Energy Efficiency Verification Program, it is likely that the Canadian government will require small electric motors to be certified through the same CAN/CSA Energy Efficiency Verification Program. NEMA requested that DOE recognize independent third party efficiency certification programs for small electric motors, but not mandate use of independent third party certification programs or accreditation programs for testing facilities. Rather, it stressed that DOE recognition of such programs would encourage voluntary use of certification through third parties, such as NIST/NVLAP. In addition, NEMA recommended that DOE allow sufficient time for the approval of such programs and manufacturer participation in such programs because no accreditation programs for testing in accordance with IEEE Standard 112 Method A, IEEE Standard 114, or CAN/CSA–C747 currently exist.

NEEA expressed its support for a nationally recognized certification program or accredited laboratory, according to the requirements that currently apply to electric motors. (*See* 10 CFR 431.17(a)(5)) It recommended that DOE apply the same requirements to the small electric motors covered in this rulemaking. (NEEA, No. 10 at p. 2)

In view of the above comments, in this SNOPR, DOE is proposing to add the same provisions regarding nationally recognized certification programs to the small electric motors regulations as are currently found in the electric motors regulations at 10 CFR 431.17(a)(5), 431.20, and 431.21. DOE is proposing to allow the use of such approved programs although, in the future, DOE may require manufacturers to test small electric motors through a nationally recognized certification program or an independent testing program.

O. Issues Related to Compliance Certification and Enforcement of Electric Motors and Small Electric Motors

In response to the December 2008 test procedure NOPR and the March 2010 small electric motor energy conservation standards NOPR, DOE received comments on several topics pertaining to the compliance certification and enforcement of electric motors and small electric motors. These issues included: Definitions of "basic model" for electric motors and small electric motors, enforcement of energy conservation standards for electric motors and small electric motors, compliance certification and submission of data requirements for electric motors and small electric motors, and labeling requirements for small electric motors. DOE plans to address these issues and others in the second phase of its Compliance Certification and Enforcement rulemaking. In this SNOPR, however, DOE requests further comment and specific suggestions on how DOE should amend the provisions listed above.

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice or any aspect of this rulemaking no later than February 4, 2011. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, portable data format (PDF), or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author, if possible. Comments, data, and information submitted to DOE by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

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 of the information: 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. Although DOE will consider the submitter's views, DOE will make its own determination as to the confidential status of the information, and treat the

[9] Further, 10 CFR 431.17(a)(5) provides for a manufacturer to establish compliance either through (1) a certification program that DOE has classified as nationally recognized, such as CAN/CSA or Underwriters Laboratories, Inc., or (2) testing in any laboratory that is accredited by the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP).

information 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 or available from public 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 after which such information might no longer be considered confidential, and (7) why disclosure of the information would be contrary to the public interest. (10 CFR 1004.11(f))

After the close of the comment period, DOE will review the comments received and conduct further analyses as needed.

B. Issues on Which the Department of Energy Seeks Comment

Comments are welcome on all the issues raised in this SNOPR. However, DOE is particularly interested in receiving comments concerning the following issues:

1. Definition of Electric Motor

DOE invites comment on its proposed definition for "electric motor." DOE's proposed definition is intended to clarify the term "electric motor" in the context of EPCA, and to ensure that all four motor types covered under EISA 2007 are covered under the broad definition of electric motor. *See* section III.A for details.

2. Definition of General Purpose Electric Motors, Subtypes I and II

DOE invites comment on its proposed definitions for "general purpose electric motor (subtype I)," "general purpose electric motor (subtype II)," and "general purpose electric motor." *See* section III.B for details.

3. Definition of NEMA Design B Motor

DOE invites comment on its revised definition for "NEMA Design B Motor," which adopts a broad definition of a NEMA Design B motor similar to that which was proposed in the December 2008, NOPR, but maintains the provisions regarding 50 hertz, updates the NEMA MG1 reference, and eliminates any reference to NEMA Design B motors necessarily being general purpose electric motors. *See* section III.C for details.

4. Fire Pump Motors Definition

DOE invites comment on its proposed definition for "fire pump motors." *See* section III.D for details.

5. Fire Pump Motor Coverage

DOE invites comment on its interpretation of the scope of coverage for fire pump motors. *See* section III.E for details.

6. Energy Conservation Standards for Electric Motors

DOE invites comment on its clarification of the applicability of the energy conservation standards tables contained in 10 CFR 431.25. *See* section III.F for details.

7. References to International Electrotechnical Commission, National Electrical Manufacturers Association, Institute of Electrical and Electronics Engineers, and Canadian Standards Association Standards for Electric Motors

DOE invites comment on its proposal to incorporate updated versions of the IEC, NEMA, IEEE, and CSA standards into 10 CFR part 431 to facilitate and clarify coverage of electric motors, including metric-equivalent motors. DOE also invites comments on whether the updates to the test methods will change the efficiency of motors tested. *See* section III.G for details.

8. National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program Handbook 150–10 Update and Checklist

DOE invites comment on its proposal to reference NIST Handbook 150–10, which has been updated by NIST to incorporate references to the same test procedures proposed by DOE in the December 2008 NOPR. *See* section III.H for details.

9. Appendix A to Subpart B of Title 10 of the Code of Federal Regulations Part 431

DOE invites comment on its revision of the contents of appendix A to provide guidance in line with the changes promulgated by EISA 2007, including its proposed guidance concerning shaft dimensions, length, shoulder location, and special designs. *See* section III.I for details.

10. Canadian Standards Association Test Procedure for Small Electric Motors

DOE invites comment on its proposal to allow a manufacturer to use CAN/CSA Standard C747–09 as an alternative to the IEEE Standard 112 Test Method A and IEEE Standard 114; and CAN/CSA Standard C390–10 as an alternative to the IEEE Standard 112 Test Method B for small electric motors. DOE may or may not promulgate these two alternative standards in the final rule of this test procedure based on comments from interested parties. *See* section III.K for details.

11. Small Electric Motor Represented Efficiency Value

DOE invites comment on its proposed definition of the represented efficiency value. *See* section III.L for details.

12. Validation of the Small Electric Motor Alternative Efficiency Determination Method

DOE invites comment on its proposed approach for using actual testing to validate an AEDM model. The proposed method is consistent with the approach followed by electric motor manufacturers for 1–200 horsepower motors currently in place. *See* section III.M for details.

13. Small Electric Motor Nationally Recognized Certification Program

DOE invites comment on its proposed approach to allow manufacturers to certify compliance using a nationally recognized certification program, similar to the program used for electric motors. DOE specifically would like to know if independent third party compliance certification or laboratory accredited programs for small electric motors (1) currently exist for the appropriate small electric motors test procedures, (2) if not should they be established, and (3) should they be made mandatory or voluntary. *See* section III.N for details.

14. Issues Related to Compliance Certification and Enforcement of Electric Motors and Small Electric Motors

DOE invites comment and specific suggestions on how DOE should amend the provisions related to compliance certification and enforcement, including the definition of "basic model," enforcement of energy conservation standards, and compliance certification and submission of data requirements for electric motors and small electric motors, as well as labeling requirements for small electric motors. *See* section III.O for details.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under Executive Order 12866, "Regulatory

Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this proposed action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will have no significant economic impact on a substantial number of small entities. Also, as required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov*. DOE reviewed today's SNOPR under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

To estimate the number of small businesses impacted by the rule, DOE considered the size standards for a small business listed by the North American Industry Classification System (NAICS) code and description, under 13 CFR 121.201. To be considered a small business, a manufacturer of electric motors or small electric motors and its affiliates may employ a maximum of 1,000 employees. DOE estimates that there are approximately 20 domestic motor manufacturers that manufacture electric motors or small electric motors covered by EPCA, and no more than six of these manufacturers are small businesses employing a maximum of 1,000 employees. These estimates are based on analyses DOE conducted in the final rule establishing energy conservation standards for small electric motors at 75 FR 10874 (March 9, 2010) and the final rule that set forth test procedures for electric motors at 64 FR 54114 (October 5, 1999). In these previous rules, DOE calculated the number of motor manufacturers, including which of those manufacturers are small businesses, based on interviews with motor manufacturers and publicly available data.

The SNOPR proposes additional test procedures that are consistent with current industry practice, clarifies definitions for certain key terms, clarifies the scope of energy conservation standards for electric motors, and updates references to standards publications and test procedures otherwise incorporated by reference. DOE believes that the cost of complying with the test procedures proposed in this SNOPR would not impose significant economic costs on motor manufacturers that are small businesses because many, if not most, motor manufacturers are already manufacturing their electric motors or small electric motors to the latest industry-developed energy efficiency performance standards that are the basis for the standards in EPCA and in Title 10 of the Code of Federal Regulations, Part 431 (10 CFR part 431). In addition, the SNOPR promotes consistency with current industry test procedures and methodologies because the SNOPR is not proposing any additional testing requirements or higher accuracy tolerances beyond what is already contained in the industry standards documents incorporated by reference for this equipment (*i.e.,* IEEE Std 114, IEEE Std 112; CSA C390, and CAN/CSA C747.) DOE elaborated on these analyses in the December 22, 2008, test procedure notice of proposed rulemaking (NOPR), which today's SNOPR supplements. 73 FR 78220. DOE believes that the costs imposed on manufacturers of electric motors and small electric motors as a result of today's SNOPR are not greater than the costs that would have been imposed on these manufacturers under the December 22, 2008 NOPR.

Moreover, DOE previously considered the one comment it received regarding impacts on small businesses in the small motors test procedure rulemaking at 64 FR 54114 (October 5, 1999). The commenter recommended that DOE provide more than one agency to certify and/or accredit labs and provide a simple procedure to verify electric motor compliance with EPCA efficiency levels. DOE addressed these concerns by finalizing a rule that provided multiple ways to certify compliance and adopted simple, repeatable, and statistically valid sampling procedures.

Based on the above, DOE believes that the test procedure amendments proposed in today's SNOPR will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Act analysis is therefore not required. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE provided the Chief Counsel for Advocacy of the Small Business Administration a certification and supporting statement of factual basis pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of covered electric motors must certify to DOE that their electric motors comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their electric motors according to the DOE test procedure for electric motors, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including electric motors. 75 FR 56796 (September 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this 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 burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121 and e-mail to *Christine_J._Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act

In this notice, DOE proposes limited revisions to new and amended test procedures that are used to measure and determine the energy efficiency of certain types of electric motors. This proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969, (NEPA) 42 U.S.C. 4321 *et seq.,* and DOE's implementing regulations at 10 CFR part 1021. In particular, today's proposed rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in DOE's NEPA regulations in appendix A to subpart D of 10 CFR part 1021. Today's proposed rule will not affect the amount, quality, or distribution of energy usage, and therefore will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, no action is required under Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires, among other things, that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rulemaking meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 2 U.S.C. 1501 *et seq.*) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, or Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate that may result in costs State, local, or Tribal governments or the private sector of $100 million or more in any one year (adjusted annually for inflation). (2 U.S.C. 1532(a) and (b)) Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input by elected officers of State, local, and Tribal governments. (2 U.S.C. 1534) On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (also available at *http://www.gc.doe.gov*). Today's supplemental proposed rule does not establish any new or amended test procedures that would be used in measuring the energy efficiency of electric motors or small electric motors—it merely clarifies existing definitions and test procedures. This supplemental proposed rule would, therefore, not result in the expenditure of $100 million or more in any year. Accordingly, no assessment or analysis is required under the UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's supplemental proposed rule to amend DOE test procedures would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this supplemental proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554, 44 U.S.C. 3516) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency under general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's supplemental proposed rule under the OMB and DOE

guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated a final rule or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Because this rulemaking is not expected to be a significant regulatory action under Executive Order 12866; it would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated a significant energy action by the Administrator of OIRA, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The rule proposed in this notice incorporates testing methods contained in the following commercial standards: (1) CAN/CSA C390–10, *Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,* March 22, 2010; (2) CAN/CSA C747–09, *Energy efficiency test methods for small motors,* October 1, 2009; (3) IEC Standard 60034–1 (2010), *Rotating Electrical Machines, Part 1: Rating and Performance,* Section 4: Duty, clause 4.2.1 and Figure 1; (4) Standard 60034–12 (2007), *Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors,* clauses 5.2, 5.4, 6, and 8, and Tables 1, 2, 3, 4, 5, 6, and 7; and (5) NEMA Standards Publication MG1–2009 Section I (Part 1), Section I (Part 4), Section II (Part 12), and Section II (Part 14).

DOE has evaluated these revised standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact of these test procedures on competition.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 15, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 431 of chapter II of title 10, Code of Federal Regulations, as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.11 is revised to read as follows:

§ 431.11 Purpose and scope.

This subpart contains energy conservation requirements for electric motors. It contains test procedures that EPCA requires DOE to prescribe, related requirements, energy conservation standards prescribed by EPCA, labeling rules, and compliance procedures. It also identifies materials incorporated by reference in this part. This subpart does not cover "small electric motors," which are addressed in subpart X of this part.

3. Section 431.12 is amended by revising the introductory text, revising the definitions of "accreditation," "definite purpose motor," "general purpose electric motor (subtype I)," "general purpose electric motor (subtype II)," and "nominal full load efficiency," by removing the definition of "general purpose motor" and by adding in alphabetical order, new definitions for "electric motor," "fire pump motor," "general purpose electric motor," and "NEMA Design B motor" to read as follows:

§ 431.12 Definitions.

The following definitions apply for purposes of this subpart, and of subparts U and V of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in Section 340 of the Act.

Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in Test Method B of IEEE Standard 112–2004 and CAN/CSA Standard C390–10 (incorporated by reference, *see* § 431.15).

* * * * *

Definite purpose motor means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in NEMA Standards Publication MG1–2009, paragraph 14.3, "Unusual Service Conditions," (incorporated by reference, *see* § 431.15) or for use on a particular type of application, and which cannot be used in most general purpose applications.

* * * * *

Electric motor means a machine that converts electrical power into rotational mechanical power.

* * * * *

Fire pump motor means an electric motor that meets the performance and construction requirements of section 9.5 of National Fire Protection Association (NFPA) Standard 20–2010, "Standard for the Installation of Stationary Pumps for Fire Protection," and Underwriters Laboratories (UL) 1004–5, "Standard for Fire Pump Motors," dated September 15, 2008.

* * * * *

General purpose electric motor means any electric motor that is designed in standard ratings with either:

(1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–2009, paragraph 14.2, "Usual Service Conditions," (incorporated by reference, *see* § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–2009, paragraph 14.3, "Unusual Service Conditions," (incorporated by reference, *see* § 431.15) or for a particular type of application, and which can be used in most general purpose applications. These cited examples of standard operating characteristics and mechanical construction are for illustrative purposes only.

General purpose electric motor (subtype I) means a general purpose electric motor that:

(1) Is a single-speed induction motor (MG1);

(2) Is rated for continuous duty (MG1) operation or for duty type S1 (IEC);

(3) Contains a squirrel-cage (MG1) or cage (IEC) rotor;

(4) Has foot-mounting that may include foot-mounting with flanges or detachable feet;

(5) Is built in accordance with NEMA T-frame dimensions (MG1) or their IEC metric equivalents (IEC);

(6) Has performance in accordance with NEMA Design A (MG1) or B characteristics or equivalent designs such as IEC Design N (IEC);

(7) Operates on polyphase alternating current 60-hertz sinusoidal power, and:

(i) Is rated 230 or 460 volts (or both) including motors rated at multiple voltages that include 230 or 460 volts (or both), or

(ii) Can be operated on 230 or 460 volts (or both); and

(8) Includes, but is not limited to, explosion-proof construction.

Note to Definition of General purpose electric motor (subtype I): Terms in this definition followed by the parenthetical "MG1" must be construed with reference to provisions in NEMA Standards Publication MG1–2009 (incorporated by reference in § 431.15), and elements followed by the parenthetical "IEC" must be construed with reference to the IEC Standards (incorporated by reference in § 431.15). 10 CFR part 431, subpart B applies to general purpose electric motors (subtype I) even if the NEMA or IEC-equivalent frame size or design element has been discontinued or is discontinued in the future.

General purpose electric motor (subtype II) means any general purpose electric motor that incorporates design elements of a general purpose electric motor (subtype I) but, unlike a general purpose electric motor (subtype I), is configured in one or more of the following ways:

(1) Is built in accordance with NEMA U-frame dimensions (MG1) or their IEC metric equivalents (IEC);

(2) Has performance in accordance with NEMA Design C characteristics (MG1) or equivalent designs such as IEC Design H (IEC);

(3) Is a close-coupled pump motor;

(4) Is a footless motor;

(5) Is a vertical solid shaft normal thrust motor (as tested in a horizontal configuration) (MG1);

(6) Is an eight-pole motor (900 rpm); or

(7) Is a polyphase motor with voltage of not more than 600 volts (other than 230 or 460 volts).

Note to Definition of General purpose electric motor (subtype II): Terms in this definition followed by the parenthetical "MG1" must be construed with reference to provisions in NEMA Standards Publication MG1–2009 (incorporated by reference in § 431.15), and elements followed by the parenthetical "IEC" must be construed with reference to the IEC Standards (incorporated by reference in § 431.15). 10 CFR part 431, subpart B applies to general purpose electric motors (subtype I) even if the NEMA or IEC-equivalent frame size or design element has been discontinued or is discontinued in the future.

* * * * *

NEMA Design B motor means a squirrel-cage motor designed to withstand full-voltage starting, developing locked-rotor, breakdown, and pull-up torques adequate for general application as specified in sections 12.38, 12.39 and 12.40 of NEMA Standards Publication MG1–2009 (incorporated by reference, *see* § 431.15), drawing locked-rotor current not to exceed the values shown in section 12.35.1 for 60 hertz and 12.35.2 for 50 hertz of NEMA Standards Publication MG1–2009, and having a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

* * * * *

Nominal full load efficiency means, with respect to an electric motor, a representative value of efficiency selected from the "nominal efficiency" column of Table 12–10, NEMA Standards Publication MG1–2009, (incorporated by reference, *see* § 431.15), that is not greater than the average full load efficiency of a population of motors of the same design.

* * * * *

4. A new § 431.14 is added to read as follows:

§ 431.14 Sources for information and guidance.

(a) *General.* The standards listed in this paragraph are referred to in the DOE procedures for testing laboratories, and recognition of accreditation bodies and certification programs but are not incorporated by reference. These sources are given here for information and guidance.

(b) *NVLAP.* National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, M/S 2140, Gaithersburg, MD 20899.

(1) NVLAP Handbook 150, *Procedures and General Requirements,* March 1994.

(2) NVLAP Handbook 150–10, *Efficiency of Electric Motors,* August 1995.

(c) *ISO/IEC.* International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland/ International Electrotechnical Commission, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20, Switzerland.

(1) ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories,* 1990.

(2) ISO Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* 1983.

(3) ISO/IEC Guide 28, *General rules for a model third-party certification system for products,* 2004.

(4) ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* 1993.

(5) ISO/IEC Guide 65, *General requirements for bodies operating product certification systems,* 1996.

5. Section 431.15 is revised to read as follows:

§ 431.15 Materials incorporated by reference.

(a) *General.* The Department of Energy incorporates by reference the following standards and test procedures into subpart B of part 431. The Director of the Federal Register has approved the material listed for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any

subsequent amendment to a standard by the standard-setting organization will not affect DOE regulations unless and until DOE amends its test procedures. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register.** All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, or go to *http://www1.eere.energy.gov/buildings/appliance_standards/.*

(b) *CAN/CSA.* Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or go to *http://www.shopcsa.ca/onlinestore/welcome.asp.*

(1) CSA C390–10, *Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,* March 22, 2010, IBR approved for §§ 431.12; 431.16; 431.19; 431.20; appendix B to subpart B of part 431.

(2) [Reserved]

(c) *IEC.* International Electrotechnical Commission Central Office, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20, Switzerland, +41 22 919 02 11, or go to *http://webstore.iec.ch.*

(1) International Electrotechnical Commission Standard 60034–1 (2010), *Rotating Electrical Machines, Part 1: Rating and Performance,* Section 4: Duty, clause 4.2.1 and Figure 1, IBR approved for § 431.12.

(2) International Electrotechnical Commission Standard 60050–411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machines,* sections 411–33–07 and 411–37–26, IBR approved for § 431.12.

(3) International Electrotechnical Commission Standard 60072–1 (1991), *Dimensions and Output Series for Rotating Electrical Machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080,* clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2, and 4, IBR approved for § 431.12.

(4) International Electrotechnical Commission Standard 60034–12 (2007), *Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors,* clauses 5.2, 5.4, 6, and 8, and Tables 1, 2, 3, 4, 5, 6, and 7, IBR approved for § 431.12.

(d) *IEEE.* Institute of Electrical and Electronics Engineers Standard 112 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), or *http://www.ieee.org/web/publications/home/index.html.*

(1) Institute of Electrical and Electronics Engineers, Inc., Standard 112–2004, *Test Procedure for Polyphase Induction Motors and Generators, Test Method B, Input-Output with Loss Segregation,* 4 November 2004, IBR approved for §§ 431.12; 431.16; 431.19; 431.20; appendix B to subpart B of part 431.

(2) [Reserved]

(e) *NEMA.* National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1752, Rosslyn, Virginia 22209, 703–841–3200, or go to *http://www.nema.org/.*

(1) The following provisions of NEMA Standards Publication MG1–2009, *Motors and Generators,* IBR approved for §§ 431.12; 431.31; appendix A to subpart B; and appendix B to subpart B of part 431:

(i) Section I, General Standards Applying to All Machines, Part 1, Referenced Standards and Definitions, paragraphs 1.18.1, 1.18.1.1, 1.19.1.1, 1.19.1.2, 1.19.1.3, and 1.40.1, IBR approved for § 431.12;

(ii) Section I, General Standards Applying to All Machines, Part 4, Dimensions, Tolerances, and Mounting, paragraphs 4.1, 4.2.1, 4.2.2, 4.4.1, 4.4.2, 4.4.4, 4.4.5, and 4.4.6, Figures 4–1, 4–2, 4–3, 4–4, and 4–5, and Table 4–2, IBR approved for § 431.12;

(iii) Section II, Small (Fractional) and Medium (Integral) Machines, Part 12, Tests and Performance—AC and DC Motors, paragraphs 12.35.1, 12.38.1, 12.38.2, 12.39.1, 12.39.2, and 12.40.1, 12.40.2, 12.58.1, and Tables 12–2 and 12–10, IBR approved for § 431.12, and paragraph 12.58.2, IBR approved for § 431.31; and

(iv) Section II, Small (Fractional) and Medium (Integral) Machines, Part 14, Application Data—AC and DC Small and Medium Machines, paragraphs 14.2 and 14.3, IBR approved for § 431.12.

(2) [Reserved]

6. Section 431.18, paragraph (b) is revised to read as follows:

§ 431.18 Testing laboratories.

* * * * *

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285. The National Voluntary Laboratory Accreditation Program, "Procedures and General Requirements," NIST Handbook 150–10, February 2007, and Lab Bulletin LB–42–2009, *Efficiency of Electric Motors Program,* (*see* § 431.15(f)(2)(i)), present the technical requirements of NVLAP for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program "Procedures and General Requirements," which contains 15 CFR part 285 plus all general NIST/NVLAP procedures, criteria, and policies. Changes in NIST/NVLAP's criteria, procedures, policies, standards, or other bases for granting accreditation occurring after the initial effective date of 10 CFR part 431 shall not apply to accreditation under this part unless approved in writing by the Department of Energy. Information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, (301) 975–4016 (telephone), or (301) 926–2884 (fax).

7. Section 431.19, paragraphs (b)(4) and (c)(4), are revised to read as follows:

§ 431.19 Department of Energy recognition of accreditation bodies.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CSA Standard C390–10 (incorporated by reference, *see* § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) * * *

(4) *Expertise in electric motor test procedures.* The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CSA Standard C390–10 (incorporated by reference, *see* § 431.15) and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories, (*see* § 431.15(f)(2)(ii)) to

energy efficiency testing for electric motors.

* * * * *

8. Section 431.20 is amended by revising paragraphs (b)(4) and (c)(4) to read as follows:

§ 431.20 Department of Energy recognition of nationally recognized certification programs.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CAN/CSA Standard C390–10 (incorporated by reference, *see* § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) * * *

(4) Expertise in electric motor test procedures. The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CSA Standard C390–10 (incorporated by reference, *see* § 431.15) and with similar procedures and methodologies for electric. This part of the petition should include a description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories,* to energy efficiency testing for electric motors.

* * * * *

9. Section 431.25 is revised to read as follows:

§ 431.25 Energy conservation standards.

(a) Except as provided in paragraph (b) of this section, each general purpose electric motor (subtype I) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, including a NEMA Design B motor that is a general purpose electric motor (subtype I), manufactured (alone or as a component of another piece of equipment) shall have a nominal full load efficiency no less than the following:

NOMINAL FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS

[Subtype I]

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency					
	Open motors (number of poles)			Enclosed motors (number of poles)		
	6	4	2	6	4	2
1/.75	82.5	85.5	77.0	82.5	85.5	77.0
1.5/1.1	86.5	86.5	84.0	87.5	86.5	84.0
2/1.5	87.5	86.5	85.5	88.5	86.5	85.5
3/2.2	88.5	89.5	85.5	89.5	89.5	86.5
5/3.7	89.5	89.5	86.5	89.5	89.5	88.5
7.5/5.5	90.2	91.0	88.5	91.0	91.7	89.5
10/7.5	91.7	91.7	89.5	91.0	91.7	90.2
15/11	91.7	93.0	90.2	91.7	92.4	91.0
20/15	92.4	93.0	91.0	91.7	93.0	91.0
25/18.5	93.0	93.6	91.7	93.0	93.6	91.7
30/22	93.6	94.1	91.7	93.0	93.6	91.7
40/30	94.1	94.1	92.4	94.1	94.1	92.4
50/37	94.1	94.5	93.0	94.1	94.5	93.0
60/45	94.5	95.0	93.6	94.5	95.0	93.6
75/55	94.5	95.0	93.6	94.5	95.4	93.6
100/75	95.0	95.4	93.6	95.0	95.4	94.1
125/90	95.0	95.4	94.1	95.0	95.4	95.0
150/110	95.4	95.8	94.1	95.8	95.8	95.0
200/150	95.4	95.8	95.0	95.8	96.2	95.4

(b) Each fire pump motor manufactured (alone or as a component of another piece of equipment) shall have a nominal full load efficiency no less than the following:

NOMINAL FULL-LOAD EFFICIENCIES OF FIRE PUMP MOTORS

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
1/.75	74.0	80.0	82.5	–	74.0	80.0	82.5	75.5
1.5/1.1	75.5	84.0	84.0	82.5	77.0	85.5	84.0	82.5
2/1.5	85.5	85.5	84.0	84.0	82.5	86.5	84.0	84.0
3/2.2	86.5	86.5	86.5	84.0	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	87.5	85.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	88.5	87.5	85.5	89.5	89.5	88.5
10/7.5	89.5	90.2	89.5	88.5	88.5	89.5	89.5	89.5

NOMINAL FULL-LOAD EFFICIENCIES OF FIRE PUMP MOTORS—Continued

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
15/11	89.5	90.2	91.0	89.5	88.5	90.2	91.0	90.2
20/15	90.2	91.0	91.0	90.2	89.5	90.2	91.0	90.2
25/18.5	90.2	91.7	91.7	91.0	89.5	91.7	92.4	91.0
30/22	91.0	92.4	92.4	91.0	91.0	91.7	92.4	91.0
40/30	91.0	93.0	93.0	91.7	91.0	93.0	93.0	91.7
50/37	91.7	93.0	93.0	92.4	91.7	93.0	93.0	92.4
60/45	92.4	93.6	93.6	93.0	91.7	93.6	93.6	93.0
75/55	93.6	93.6	94.1	93.0	93.0	93.6	94.1	93.0
100/75	93.6	94.1	94.1	93.0	93.0	94.1	94.5	93.6
125/90	93.6	94.1	94.5	93.6	93.6	94.1	94.5	94.5
150/110	93.6	94.5	95.0	93.6	93.6	95.0	95.0	94.5
200/150	93.6	94.5	95.0	94.5	94.1	95.0	95.0	95.0
250/186	94.5	95.4	95.4	94.5	94.5	95.0	95.0	95.4
300/224	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
350/261	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
400/298	.....	.....	95.4	95.4	.....	.....	95.4	95.4
450/336	.....	.....	95.8	95.8	.....	.....	95.4	95.4
500/373	.....	.....	95.8	95.8	.....	.....	95.8	95.4

(c) Each general purpose electric motor (subtype II) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, including a NEMA Design B motor that is a general purpose electric motor (subtype II), manufactured (alone or as a component of another piece of equipment) shall have a nominal full load efficiency no less than the following:

NOMINAL FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS

[Subtype II]

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
1/.75	74.0	80.0	82.5	.....	74.0	80.0	82.5	75.5
1.5/1.1	75.5	84.0	84.0	82.5	77.0	85.5	84.0	82.5
2/1.5	85.5	85.5	84.0	84.0	82.5	86.5	84.0	84.0
3/2.2	86.5	86.5	86.5	84.0	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	87.5	85.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	88.5	87.5	85.5	89.5	89.5	88.5
10/7.5	89.5	90.2	89.5	88.5	88.5	89.5	89.5	89.5
15/11	89.5	90.2	91.0	89.5	88.5	90.2	91.0	90.2
20/15	90.2	91.0	91.0	90.2	89.5	90.2	91.0	90.2
25/18.5	90.2	91.7	91.7	91.0	89.5	91.7	92.4	91.0
30/22	91.0	92.4	92.4	91.0	91.0	91.7	92.4	91.0
40/30	91.0	93.0	93.0	91.7	91.0	93.0	93.0	91.7
50/37	91.7	93.0	93.0	92.4	91.7	93.0	93.0	92.4
60/45	92.4	93.6	93.6	93.0	91.7	93.6	93.6	93.0
75/55	93.6	93.6	94.1	93.0	93.0	93.6	94.1	93.0
100/75	93.6	94.1	94.1	93.0	93.0	94.1	94.5	93.6
125/90	93.6	94.1	94.5	93.6	93.6	94.1	94.5	94.5
150/110	93.6	94.5	95.0	93.6	93.6	95.0	95.0	94.5
200/150	93.6	94.5	95.0	94.5	94.1	95.0	95.0	95.0

(d) Each NEMA Design B motor that is a general purpose electric motor with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) shall have a nominal full load efficiency no less than the following:

NOMINAL FULL-LOAD EFFICIENCIES OF NEMA DESIGN B GENERAL PURPOSE ELECTRIC MOTORS

Motor horsepower/ standard kilowatt equivalent	Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
250/186	94.5	95.4	95.4	94.5	94.5	95.0	95.0	95.4
300/224	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
350/261	.....	95.4	95.4	95.0	.....	95.0	95.4	95.4
400/298	.....	.....	95.4	95.4	.....	.....	95.4	95.4
450/336	.....	.....	95.8	95.8	.....	.....	95.4	95.4
500/373	.....	.....	95.8	95.8	.....	.....	95.8	95.4

(e) For purposes of determining the required minimum nominal full load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or two kilowatt ratings listed in any table of energy conservation standards in paragraphs (a) through (d) of this section, each such motor shall be deemed to have a listed horsepower or kilowatt rating, determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers; or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula 1 kilowatt = (1/0.746) horsepower. The conversion should be calculated to three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraphs (e)(1) or (e)(2) of this section, whichever applies.

(f) This section does not apply to definite purpose motors, special purpose motors, or those motors exempted by the Secretary.

10. In § 431.31, paragraph (a)(2) is revised to read as follows:

§ 431.31 Labeling requirements.

(a) * * *

(2) *Display of required information.* All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full load efficiency shall be identified either by the term "Nominal Efficiency" or "Nom. Eff." or by the terms specified in paragraph 12.58.2 of NEMA MG1–2009, (incorporated by reference, *see* § 431.15) as for example "NEMA Nom. Eff. __." The DOE number shall be in the form "CC__.

* * * * *

11. Appendix A to subpart B of part 431 is revised to read as follows:

Appendix A to Subpart B of Part 431—Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

This is in part an update to a reprint of a policy statement that was originally published on November 5, 1997 at 62 FR 59978 and is herein modified according to the Energy Policy and Conservation Act, as amended by the Energy Independency and Security Act of 2007.

Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

I. Introduction

The Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6311, *et seq.,* as amended by the Energy Policy Act of 1992 (EPAct 1992), established energy efficiency standards and test procedures for certain commercial and industrial electric motors manufactured (alone or as a component of another piece of equipment).[1] EPCA also directs the Department of Energy (DOE or Department) to implement the statutory test procedures prescribed for motors, and to require efficiency labeling of motors and certification that covered motors comply with the standards. (42 U.S.C. 6314–6315)

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007) struck EPCA section 340(13)(A) and all that followed through the end of subpart (A), including the definition of "electric motor," and inserted in its place two new subsections under the heading "electric motor" that defined two subtypes of general purpose electric motors: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)(A) and (B)) Section 313(b)(1) of EISA 2007 updated the energy conservation standards for those electric motors already covered by EPCA (general purpose electric motor (subtype I)) and established energy conservation standards for specific motor types not previously covered, including: General purpose electric motor (subtype II), fire pump motors, and NEMA Design B, general purpose electric motors rated at 200 to 500 horsepower. (42 U.S.C. 6313(b)(2)) The EISA 2007 energy conservation standards apply to covered motors manufactured or imported on or after December 19, 2010. The EISA 2007 definitions and efficiency standards were subsequently codified under §§ 431.12 and 431.25 respectively, of Title 10 of the Code of Federal Regulations, Part 431 (10 CFR part 431).

On October 5, 1999, the Department published a Final Rule on Test Procedures for Electric Motors that clarified the several definitions including "electric motor," "general purpose electric motor," "general purpose electric motor (subtype I)," and "general purpose electric motor (subtype II)."

Notwithstanding the above referenced provisions, in the past there has been uncertainty as to which motors EPCA covers. Consequently, motor manufacturers requested that the Department provide additional guidance as to which types of motors are "general purpose electric motors (subtype I)," "general purpose electric motors (subtype II)," "definite purpose motors," and "special purpose motors" under EPCA. The policy statement that follows represents the Department's interpretation of existing statutes and regulations, informed by input from motor manufacturers and energy efficiency advocates. It is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of EPCA, EISA or DOE regulations. It does not, and is not intended to, have the force and effect of law.

II. Guidelines for Determining Whether a Motor Is Covered as a General Purpose Electric Motor (Subtype I) or (Subtype II)

A. General

EPCA, as amended by EISA 2007, specifies minimum nominal full-load energy efficiency standards for several types of electric motors, including general purpose electric motors (subtype I) and general purpose electric motors (subtype II). Motors with features or characteristics that do not meet the definitions of the above terms are not required to meet the corresponding EPCA requirements. An example includes variable speed motors operated on a variable frequency power supply. Similarly, multi-speed motors and variable-speed motors, such as inverter-duty motors, are not covered equipment, based on their intrinsic design for

[1] The term "manufacture" means "to manufacture, produce, assemble or import." EPCA § 321(10). Thus, the standards apply to motors produced, assembled, imported or manufactured after these statutory deadlines.

use at variable speeds. However, NEMA Design A, B, or C motors that are single speed, meet all other criteria under the definitions in EPCA for general purpose electric motors (subtype I) or general purpose electric motors (subtype II), and can be used with an inverter in variable speed applications as an additional feature, are covered equipment under EPCA. In other words, being suitable for use on an inverter by itself does not exempt a motor from general purpose electric motors (subtype I) and general purpose electric motors (subtype II) EPCA requirements.

B. Electrical Features

EPCA, as amended by EISA, establishes two categories of electric motors: General purpose electric motor (subtype I) or a general purpose electric motor (subtype II). In DOE's view, a general purpose electric motor (subtype I) or (subtype II) operates on polyphase alternating current 60-Hertz sinusoidal power, and can be operated on either 230 volts or 460 volts, or both; or can be operated with voltage of not more than 600 volts (other than 230 or 460 volts). Furthermore, "can be operated" implicitly means that the motor can be operated successfully. According to National Electrical Manufacturers Association (NEMA) Standards Publication MG1–2009, paragraph 12.44, "Variations from Rated Voltage and Rated Frequency," alternating-current motors must operate successfully under running conditions at rated load with a variation in the voltage or the frequency up to the following: plus or minus 10 percent of rated voltage, with rated frequency for induction motors;[2] plus or minus 5 percent of rated frequency, with rated voltage; and a combined variation in voltage and frequency of 10 percent (sum of absolute values) of the rated values, provided the frequency variation does not exceed plus or minus 5 percent of rated frequency. DOE believes that, for purposes of determining whether a motor is a general purpose electric motor (subtype I) or (subtype II), these criteria should be used to determine when a motor that is not rated at 230 or 460 volts or 60 Hertz can be operated at such voltage and frequency; or when it is operated at a rated voltage of not more than 600 volts (other than 230 or 460 volts).[3]

Under sections 340(13)(A) and 342(b)(3) of EPCA, as amended by EISA 2007, general purpose electric motors (subtype I) include motors that meet the electrical performance characteristics of NEMA Design A or B; and general purpose electric motors (subtype II) include motors that meet the electrical performance characteristics NEMA Design A, B, or C. NEMA Standards Publication MG1 assigns design letters, such as Design A, B, C, D, or E, to identify various combinations of electrical performance characteristics, including: locked rotor torque, breakdown torque, pull-up torque, locked rotor current, and slip at rated load. In the Department's view, a motor must meet the electrical performance characteristics of a NEMA Design A, B, or C motor to be covered as a general purpose electric motor (subtype I) or general purpose electric motor (subtype II). For example, as to locked rotor torque, MG1 specifies performance values for Design A, B, or C motors of a given speed and horsepower. A motor that does not meet the locked rotor torque requirements for Design A, B, or C is not a general purpose electric motor (subtype I) or general purpose electric motor (subtype II) covered under EPCA.

C. Size

Motors designed for use on a particular type of application which are in a frame size that is one or more frame series larger than the frame size assigned to that rating in NEMA Standards Publication MG1–2009 Part 13, "Frame Assignments for Alternating Current Integral Horsepower Induction Motors," are not, in the Department's view, usable in most general purpose applications. This is due to the physical size increase associated with a frame series change. A frame series is defined by the first two digits of the frame size designation, and is a measure of the distance between the centerline of the shaft and the bottom of the mounting feet. For example, 324T and 326T are both in the same frame series, while 364T is in the next larger frame series. Hence, in the Department's view, a motor that is of a larger frame series than normally assigned to that standard rating of motor would not be usable in most general purpose applications, and therefore is not covered by EPCA's definitions of general purpose electric motors (Subtype I) and general purpose electric motors (Subtype II). A physically larger motor within the same frame series would be covered, however, because it would be usable in most general purpose applications.

Motors built in a T-frame series or a T-frame size smaller than that assigned by MG1–2009, or motors built in a U-frame series or a U-frame size smaller than that assigned by MG1–2009, are also considered usable in most general purpose applications. This is because simple modifications can generally be made to fit a smaller motor in place of a motor with a larger frame size assigned in conformity with NEMA MG1. Therefore, DOE believes that such smaller motors are covered by EPCA.

D. Motors With Seals

Some electric motors have seals to prevent ingress of water, dust, oil, and other foreign materials into the motor. DOE understands that, typically, a manufacturer will add seals to a motor that it manufactures, so that it will sell two motors that are identical except that one has seals and the other does not. In such a situation, if the motor without seals is covered by EPCA's energy conservation standards, then the motor with seals will also be covered because it can still be used in most general purpose applications. DOE understands, however, that manufacturers previously believed motors with seals were not covered under EPCA, in part because IEEE Standard 112, "Test Procedure for Polyphase Induction Motors and Generators," prescribed by EPCA, does not address how to test a motor with seals installed.

The efficiency rating of such a motor, if determined with seals installed and when the motor is new, apparently would significantly understate the efficiency of the motor as operated. New seals are stiff, and provide friction that is absent after their initial break-in period. DOE understands that, after this initial period, the efficiency ratings determined for the same motor with and without seals would be virtually identical. To construe EPCA, therefore, as requiring such separate efficiency determinations would impose an unnecessary burden on manufacturers.

In light of the foregoing, the Department believes that EPCA generally permits the efficiency of a motor with seals to be determined without the seals installed. Furthermore, notwithstanding the prior belief that such motors are not covered by EPCA, use of this approach to determining efficiency will enable manufacturers to meet EPCA's standards with respect to covered motors with seals.

III. Discussion of How DOE Would Apply EPCA Definitions, Using the Foregoing Guidelines

Using the foregoing guidelines, the attached matrix provides DOE's view as to which motors with common features are covered by EPCA's definitions of "general purpose electric motor (subtype I)" and "general purpose electric motor (subtype II)." Because manufacturers produce many basic models that have many modifications of generic general purpose motors, the Department does not represent that the matrix is all-inclusive. Rather it is a set of examples demonstrating how DOE would apply EPCA definitions, as construed by the above guidelines, to various motor types. The matrix classifies motors into five categories, which are discussed in the following passages.

Category I—General Purpose Electric Motors (Subtype I) and (Subtype II)

Category I consists of general purpose electric motors (subtype I) and general purpose electric motors (subtype II).

The Department understands that some motors essentially are relatively simple modifications of generic general purpose electric motors (subtype I) or (subtype II). Modifications could consist, for example, of minor changes such as the addition of temperature sensors or a heater, the addition of a shaft extension and a brake disk from a kit, or changes in exterior features such as the motor housing. Such motors can still be used for most general purpose applications, and

[2] For example, a motor that is rated at 220 volts should operate successfully on 230 volts, since 220 + .10(220) = 242 volts. A 208 volt motor, however, would not be expected to operate successfully on 230 volts, since 208 + .10(208) = 228.8 volts.

[3] The Department understands that a motor that can operate at such voltage and frequency, based on variations defined for successful operation, will not necessarily perform in accordance with the industry standards established for operation at the motor's rated voltage and frequency. In addition, motors are to be tested at their rated values under the test procedures prescribed by EPCA. Therefore, in DOE's view, a motor that is not rated for 230 or 460 volts, or 60 Hertz, but that can be successfully operated at these levels, must meet the energy conservation standards at its rated voltage(s) and frequency. When a motor is rated to include a wider voltage range that includes 230/460 volts, the motor should meet the energy conservation standards at 230 volts or 460 volts.

the modifications have little or no effect on motor performance. Nor do the modifications affect energy efficiency.

Category II—Specific Purpose Electric Motors That Can Be Used in Most General Purpose Applications

Category II motors are essentially modifications of generic general purpose motors for use on a particular type of application. These specific purpose Category II motors have been considered "definite-purpose" motors in common industry parlance, but are covered as general purpose electric motors (subtype I or II) under EPCA because they can be used in most general purpose applications. Category II motors are often electric motors with horsepower ratings that fall between the horsepower ratings in Section 342(b) of EPCA, thermally protected motors, and motors with roller bearings.

Categories III, IV and V—Definite Purpose Motors, Special Purpose Motors, and Motors Outside the Scope of "General Purpose Electric Motor (Subtype I)" and "General Purpose Electric Motor (Subtype II)"

Category III consists of "definite purpose motors" as defined in EPCA and 10 CFR 431.12. Section 6311(13)(C) of EPCA, as amended by EISA 2007, defines the term "definite purpose motor" as "any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications." EPCA does not prescribe standards and test procedures for "definite purpose motors."

Category IV consists of "special purpose motors" as defined in EPCA and 10 CFR 431.12. Section 6311(13)(D) of EPCA, as amended by EISA 2007, defines the term "special purpose motor" as "any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application." EPCA does not prescribe standards and test procedures for "special purpose motors."

Category V consists of electric motors outside the scope of "general purpose electric motor (subtype I)" and "general purpose electric motor (subtype II)" as defined in EPCA and 10 CFR 431.12.

Totally Enclosed Nonventilated (TENV) and Totally Enclosed Air-Over (TEAO) Motors

A motor designated in NEMA MG1–2009, paragraph MG1–1.26.1, as "totally enclosed non-ventilated (IC410)"[4] is "a frame-surface cooled totally enclosed machine which is only equipped for cooling by free convection." This means that the motor, when properly applied, does not require the use of any additional means of cooling installed external to the motor enclosure. The TENV motor is cooled by natural conduction and natural convection of the motor heat into the surrounding environment. The general requirement for the installation of the TENV motor is that it not be placed in a restricted space that would inhibit this natural dissipation of the motor heat. Most general purpose applications use motors which include a means for forcing air flow through or around the motor and usually through the enclosed space and, therefore, can be used in spaces that are more restrictive than those required for TENV motors. Placing a TENV motor in such common restricted areas is likely to cause the motor to overheat. The TENV motor may also be larger than the motors used in most general purpose applications, and would take up more of the available space, thus reducing the size of the open area surrounding the motor. Installation of a TENV motor might require, therefore, an additional means of ventilation to continually exchange the ambient around the motor.

A motor designated in NEMA MG1–2009, paragraph 1.26.9, as "totally-enclosed air-over (IP54, IC417)" is a totally enclosed frame-surface cooled machine intended for exterior cooling by a ventilating means external to the machine." That is, a TEAO motor has a cooling mechanism that is separate and independent from the motor, such as a fan. The motor must be provided with the additional ventilation to prevent it from overheating.

Consequently, neither the TENV motor nor the TEAO motor would be suitable for most general purpose applications, and, the Department considers these motors as "definite purpose motors."

Integral Gearmotors

An "integral gearmotor" is an assembly of a motor and a specific gear drive or assembly of gears, such as a gear reducer, as a unified package. The motor portion of an integral gearmotor is not necessarily a complete motor, since the end bracket or mounting flange of the motor portion is also part of the gear assembly and cannot be operated when separated from the complete gear assembly. Typically, an integral gearmotor is not manufactured to standard T-frame dimensions specified in NEMA MG1, or standard U-frame dimensions. Moreover, neither the motor portion nor the entire integral gearmotor, are capable of being used in most general purpose applications without significant modifications. An integral gearmotor is also designed for a specific purpose and can have unique performance characteristics, physical dimensions, and casing, flange and shafting configurations. Consequently, DOE considers integral gearmotors to be outside the scope of "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

However, an electric motor which is connected to a stand-alone mechanical gear drive or an assembly of gears, such as a gear reducer connected by direct coupling, belts, bolts, a kit, or other means, is covered equipment under the definitions of "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

Shafts

1. Shaft diameter—The shaft diameter is designated in NEMA MG1 by the identifier "U" and in IEC 60072–1 by the identifier "H." The strength of a shaft is dependent on the diameter of the shaft. If the diameter of a shaft is smaller than the standard diameter, the shaft may not be of sufficient strength required for general purpose belted and overhung loads. If the diameter of a shaft is bigger than the standard diameter, it may not be possible to install a coupling or pulley with an inside diameter of sufficient size to accommodate the oversized shaft and provide sufficient remaining material of sufficient strength required for general purpose applications.

The Department believes that couplings and pulleys appropriate for a given horsepower rating in the standard (NEMA or IEC) frame number series should be available to fit shaft diameters which are as large as the standard diameter for the next higher frame number series or as small as the standard diameter for the next lower frame number series. A motor otherwise considered to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)," but with a shaft diameter within the range bounded by the standard diameters for the next lower and next higher frame number series, is considered to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)." For the purpose of providing the requested guidance, the Department does not consider a motor with a shaft diameter smaller than that of the next lower frame number series or larger than that of the next higher frame number series to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

2. Shaft length—The useable shaft length is designated in NEMA MG1 by the identifier "N–W" and in IEC 60072–1 by the identifier "E." A shaft length different from the standard dimensions would require a change in the overall space required for the motor and a change in the position in which the motor could be mounted compared to a motor having a shaft of standard length. A motor with a shaft of shorter length should fit within the space of a motor having a shaft of standard length, although the mounting base may have to be modified to accommodate the change in the position of the mounting holes in the base of the motor. However, it is possible that the shaft may be too short to accommodate the size of a coupling or pulley required for the load in many general purpose applications. The Department believes that appropriate couplings or pulleys are available for shafts with a length not shorter than 50 percent of the standard length. A motor with a shaft of longer length would not fit within the space of a motor having a shaft of standard length and the location of some of the mounting holes in the base of the motor may be beyond the mounting base for the motor. The end of

[4] IP refers to the IEC Standard 34–5: Classification of degrees of protection provided by enclosures for rotating machines. IC refers to the IEC Standard 34–6: Methods of cooling rotating machinery. The IP and IC codes are referenced in the NEMA designations for TENV and TEAO motors in MG1–2009 Part 1, "Classification According to Environmental Protection and Methods of Cooling," as a Suggested Standard for Future Design, since the TENV and TEAO motors conform to IEC Standards. Details of protection (IP) and methods of cooling (IC) are defined in MG1 Part 5 and Part 6, respectively.

the motor with a longer shaft length may also extend beyond the equipment where it could possibly present some concerns should persons or other equipment unintentionally come in contact with the motor. Objects in closer proximity of the non-drive end of the motor with the longer shaft length may interfere with the cooling of the motor. The Department believes that there is some additional space available in most general purpose applications to accommodate a shaft somewhat longer than standard length, but that accommodating for increased length may be more difficult than accommodating for shorter length. The Department believes that an increase of 25 percent in standard shaft is acceptable in most general purpose applications. For the purpose of providing the requested guidance, a motor with shaft length between 0.5 to 1.25 times the standard length for the appropriate NEMA MG1 or IEC standard does not preclude the motor from being considered "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)." A motor with a shaft length outside of that range is not considered to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

3. Shoulder location—The distance from the centerline of the mounting hole in the nearest foot to the shoulder on the drive end shaft is designated in NEMA MG1 by the identifier "BA" and in IEC 60072–1 by the identifier "C." The location of the shoulder limits the position at which the coupling, pulley, or load can be installed. The "BA" or "C" dimension is separate from that of the useable shaft length "N–W" or "E." The two values combined define the distance from the centerline of the mounting hole in the nearest foot to the end of the shaft. A change in the "BA" or "C" dimension can then result in introducing installation problems similar to those resulting from a change in the "N–W" or "E" dimension. A decrease in the "BA" or "C" dimension may require modifying the mounting base to accommodate the shorter distance between the mounting holes and the end of the shaft, but there should be no problem installing the appropriate coupling or pulley for most general purpose applications. As in the case of the "N–W" or "E" dimension, a significant increase in the "BA" or "C" dimension could make it difficult to install the motor in most general purpose applications or could introduce concerns of safety. For the purpose of providing the requested guidance, an increase in the "BA" or "C" dimension up to 0.25 times the standard useable shaft length dimension "N–W" or "E" does not preclude the motor from being considered a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)." The Department does not consider a motor with an increase in the "BA" or "C" dimension greater than 0.25 times that of the "N–W" or "E" dimension to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

4. Special design—The standard dimensions in NEMA MG–1 are for smooth shafts with or without keyways. Such shafts are used with pulleys and couplings commonly found in most general purpose applications. The shaft may be straight or tapered. Other shaft designs are provided for particular applications. The Department has examined the issue of special shafts with respect to whether or not both a pulley and a coupling could be separately installed on the special shaft. An example of one common modification of the shaft design is to include a flat section in place of the keyway for the purpose of securing a coupling, pulley, or driven equipment on the shaft. It is the Department's belief that such a modification would not make it difficult to use the motor in most general purpose applications and would not remove the motor from being considered a "general purpose electric motor." Some special purpose or definite purpose applications require that the shaft have a threaded section, for securing the connection to the driven equipment in place. A threaded section on the outside of the shaft surface inhibits the proper installation of a pulley or coupling. DOE considers motors with such threaded shafts to be "definite purpose" or "special purpose" motors. However, a threaded hole in the shaft should not interfere with the installation of a pulley or coupling and DOE does not consider this to be a design which exempts the motor from being classified as a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)." As another example, motors with stepped shafts, consisting of lengths of differing diameter over the useable length of the shaft, make it difficult to properly install a pulley or coupling for general purpose applications. DOE considers motors with a stepped shaft are considered to be "definite purpose" or "special purpose" motors. The Department recognizes that the aforementioned designs are just a few examples of special shaft designs and that it is not possible to cover all possible variations of shaft design in this guidance. Rather, the Department offers the guidance that if both a properly sized pulley and properly sized coupling can be installed on a non-standard shaft at minimal cost, then the motor is not precluded from being considered to be a "general purpose electric motor (subtype I)" or "general purpose electric motor (subtype II)."

IV. Further Information

The Department has incorporated this Policy Statement into appendix A to subpart B of Title 10 of the Code of Federal Regulations, Part 431, to provide guidance as to the Department's interpretation of EPCA, as amended. Any comments or suggestions with respect to this Policy Statement, as well as requests for further information, should be addressed to the Program Manager, Building Technologies, EE–2J, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO EPCA MOTOR CATEGORIES: GENERAL PURPOSE ELECTRIC MOTOR SUBTYPE I) AND GENERAL PURPOSE ELECTRIC MOTOR (SUBTYPE II); DEFINITE PURPOSE; AND SPECIAL PURPOSE

Motor modification	Category [1]					Explanation
	I	II	III	IV	V	
A. Electrical Modifications:						
1. Altitude	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
2. Ambient	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
3. Multispeed	.....	.....	.....	.....	X	General Purpose Electric Motors (Subtype I) and (Subtype II) apply to single speed only.
4. Special Leads	X					
5. Special Insulation	X					
6. Encapsulation	.....	.....	.....	X	.....	Due to special construction.
7. High Service Factor	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
8. Space Heaters	X					
9. Wye Delta Start	X					
10. Part Winding Start	X					
11. Temperature Rise	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
12. Thermally Protected	.....	X	.....	.....	.....	Requires retesting and third party agency approval.
13. Thermostat/Thermistor	X					
14. Special Voltages	X	.....	.....	.....	.....	EPCA applies to motors operating on voltages less than 600 volts at 60 Hertz.
15. Intermediate Horsepowers	.....	X	.....	.....	.....	Round horsepower according to 10 CFR 431.42 for efficiency.

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO EPCA MOTOR CATEGORIES: GENERAL PURPOSE ELECTRIC MOTOR SUBTYPE I) AND GENERAL PURPOSE ELECTRIC MOTOR (SUBTYPE II); DEFINITE PURPOSE; AND SPECIAL PURPOSE—Continued

Motor modification	Category [1]					Explanation
	I	II	III	IV	V	
16. Frequency	.....	.....	.....	.....	X	EPCA applies to motors operating on voltages less than 600 volts at 60 Hertz.
17. Fungus/Trop Insulation	X					
B. Mechanical Modifications:						
18. Special Balance	X					
19. Bearing Temp. Detector	X					
20. Special Base/Feet	.....	.....	.....	.....	X	Does not meet definition of T-frame or U-frame.
21. Special Conduit Box	X					
22. Auxiliary Conduit Box	X					
23. Special Paint/Coating	X					
24. Drains	X					
25. Drip Cover	X					
26. Ground. Lug/Hole	X					
27. Screens on ODP Enclosure	X					
28. Mounting F1, F2; W1–4; C1, 2	X	.....	.....	.....	.....	Foot-mounting, rigid base, and resilient base.
C. Bearings:						
29. Bearing Caps	X					
30. Roller Bearings	.....	X	.....	.....	.....	Test with a standard bearing.
31. Shielded Bearings	X					
32. Sealed Bearings	X	.....	.....	.....	.....	Test with a standard bearing.
33. Thrust Bearings	.....	.....	.....	X	.....	Special mechanical construction.
34. Clamped Bearings	X					
35. Sleeve Bearings	.....	.....	.....	X	.....	Special mechanical construction.
D. Special Endshields:						
36. C Face	X	.....	.....	.....	.....	As defined in NEMA MG1.
37. D Flange	X	.....	.....	.....	.....	As defined in NEMA MG1.
38. Customer Defined	.....	.....	.....	X	.....	Special design for a particular application.
E. Seals:						
39. Contact Seals	X	.....	.....	.....	.....	Includes lip seals and taconite seals—test with seals removed.
40. Non-Contact Seal	X	.....	.....	.....	.....	Includes labyrinth and slinger seals—test with seals installed.
F. Shafts:						
41. Standard Shafts/NEMA MG1	X	.....	.....	.....	.....	Includes single and double, cylindrical, tapered, and short shafts.
42. Non-Standard Shafts or Special Shafts.	X	.....	.....	.....	.....	Shaft diameter bound by the standard diameters for the next lower and next higher frame number series.
	.....	.....	.....	.....	X	Shaft diameter smaller than that of the next lower frame number series or larger than that of the next higher frame number.
	X	.....	.....	.....	.....	Shaft length from 0.5 to 1.25 times the standard length for the appropriate NEMA MG1 or IEC standard.
	.....	.....	.....	.....	X	Shaft length outside the range from 0.5 to 1.25 times the standard length for the appropriate NEMA MG1 or IEC standard.
	X	.....	.....	.....	.....	Shaft shoulder location with an increase in the “BA” or “C” dimension up to 0.25 times that standard useable shaft length dimension “N–W” or “E”.
	.....	.....	.....	.....	X	A motor with an increase in the “BA” or “C” dimension greater than 0.25 times that of the “N–W” or “E” dimension.
	X	.....	.....	.....	.....	If both a properly sized pulley and properly sized coupling can be separately installed on a non-standard shaft without significantly changing the shaft extension or mounting configuration of the driven equipment.
43. Non-Standard Material	X					
G. Fans:						
44. Special Material	X					
45. Quiet Design	X					
H. Other Motors:						
46. Washdown	X	.....	.....	.....	.....	Test with seals removed.
47. Close-coupled pump	X	.....	.....	.....	.....	JM and JP frame assignments.
48. Integral Gear Motor	.....	.....	.....	.....	X	Typically special mechanical design, and not a T-frame or U-frame; motor and gearbox inseparable and operate as one system.
49. Vertical solid shaft normal thrust	X					
50. Saw Arbor	.....	.....	.....	X	.....	Special electrical/mechanical design.

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO EPCA MOTOR CATEGORIES: GENERAL PURPOSE ELECTRIC MOTOR SUBTYPE I) AND GENERAL PURPOSE ELECTRIC MOTOR (SUBTYPE II); DEFINITE PURPOSE; AND SPECIAL PURPOSE—Continued

Motor modification	Category [1]					Explanation
	I	II	III	IV	V	
51. TENV	.....	.....	X	.....	.....	Totally-enclosed non-ventilated; not equipped for cooling (IP54, IC410).
52. TEAO	.....	.....	X	.....	.....	Totally-enclosed air-over; requires airflow from external source (IP54, IC417).
53. Fire Pump	X	.....	.....	.....	.....	When safety certification is not required. *See also* EPCA § 342(b)(1).
54. Non-continuous	.....	.....	.....	.....	X	EPCA covers only continuous ratings as general purpose electric motor (subtype I) and (subtype II).
55. Integral Brake Motor	.....	.....	.....	X	.....	Integral brake design factory built within the motor.

[1] Category I—General purpose electric motors (subtype I) or (subtype II) as defined in EPCA.
Category II—Specific purpose electric motors that *can be used in most general purpose applications.*
Category III—Definite purpose motors as defined in EPCA.
Category IV—Special purpose motors as defined in EPCA.
Category V—Outside the scope of General purpose electric motors (subtype I) or (subtype II) as defined in EPCA.

12. Appendix B to subpart B of part 431 is revised to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

1. Definitions

Definitions contained in §§ 431.2 and 431.12 are applicable to this appendix.

2. Test Procedures

Efficiency and losses shall be determined in accordance with NEMA MG1–2009, paragraph 12.58.1, "Determination of Motor Efficiency and Losses," (incorporated by reference, *see* § 431.15) and either:

(1) CSA Standard C390–10 (incorporated by reference, *see* § 431.15), or

(2) IEEE Standard 112–2004 Test Method B, *Input-Output With Loss Segregation,* (incorporated by reference, *see* § 431.15).

3. Amendments to Test Procedures

Any revision to IEEE Standard 112–2004 Test Method B, to NEMA Standards Publication MG1–2009, or to CSA Standard C390–10 (incorporated by reference, *see* § 431.15) subsequent to promulgation of this appendix B, shall not be effective for purposes of test procedures required under Part 431 and this appendix B, unless and until Part 431 and this appendix B are amended.

13. Section 431.441 is revised to read as follows:

§ 431.441 Purpose and scope.

This subpart contains definitions, test procedures, and energy conservation requirements for small electric motors, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317. This subpart does not cover "electric motors," which are addressed in subpart B of this part.

14. In § 431.443, revise paragraphs (b)(1), (c)(1), and (c)(2), and add a new paragraph (b)(2) to read as follows:

§ 431.443 Materials incorporated by reference.

* * * * *

(b) * * *

(1) CAN/CSA–C747–09 ("CAN/CSA–C747"), *Energy efficiency test methods for small motors,* October 1, 2009, IBR approved for §§ 431.444; 431.447.

(2) CSA C390–10, *Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,* March 22, 2010, IBR approved for §§ 431.444; 431.447.

(c) * * *

(1) IEEE Standard 112–2004, ("IEEE Std 112"), *Test Procedure for Polyphase Induction Motors and Generators, Test Method A, Input-Output, and Test Method B, Input-Output with Loss Segregation,* 4 November 2004, IBR approved for §§ 431.444; 431.447.

(2) IEEE Standard 114–2001, ("IEEE Std 114"), *Test Procedure for Single-Phase Induction Motors,* 6 December 2001, IBR approved for §§ 431.444; 431.447.

15. In § 431.444, paragraph (b) is revised to read as follows:

§ 431.444 Test procedures for the measurement of energy efficiency.

* * * * *

(b) *Testing and Calculations.* Determine the energy efficiency and losses by using one of the following test methods:

(1) Single-phase small electric motors: Either IEEE 114–2001, (incorporated by reference, *see* § 431.443), or CAN/CSA C747, (incorporated by reference, *see* § 431.443);

(2) Polyphase small electric motors less than or equal to 1 horsepower (0.75 kW): Either IEEE 112–2004 Test Method A, (incorporated by reference, *see* § 431.443), or CAN/CSA C747, (incorporated by reference, *see* § 431.443); or

(3) Polyphase small electric motors greater than 1 horsepower (0.75 kW): Either IEEE 112–2004 Test Method, (incorporated by reference, *see* § 431.443), or CSA C390–10 (incorporated by reference, *see* § 431.443).

16. In § 431.445, paragraph (b)(5) is added and paragraph (c) is revised to read as follows:

§ 431.445 Determination of small electric motor efficiency.

* * * * *

(b) * * *

(5) *Use of a certification program.* (i) A manufacturer may have a certification program, that DOE has classified as nationally recognized under § 431.447, certify the average full load efficiency of a basic model of small electric motor, and issue a certificate of conformity for the small motor.

(ii) For each basic model for which a certification program is not used as described in paragraph (b)(5)(i) of this section, any testing of a motor to determine its energy efficiency must be carried out in accordance with paragraphs (b) and (c) of this section. (This includes testing of the basic model, pursuant to paragraph (b)(3)(i) of this section, to substantiate an AEDM.)

(c) *Additional testing requirements applicable when a certification program is not used*—(1) *Selection of basic models for testing.* (i) Basic models must be selected for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models that comply with § 431.446 and have the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12 calendar month period beginning in 2015, whichever is later;

(B) The basic models should be of different horsepowers without duplication;

(C) The basic models should be of different frame number series without duplication; and

(D) Each basic model should be expected to have the lowest average full load efficiency among the basic models with the same rating ("rating" as used here has the same meaning as it has in the definition of "basic model").

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(2) *Selection of units for testing within a basic model.* For each basic model selected for testing, a sample of units shall be selected at random and tested. The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be no fewer than five units, except when fewer than five units of a basic model would be produced over a reasonable period of time (approximately 180 days), then each unit shall be tested. When selecting a basic model for testing, components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption satisfy the applicable sampling provision.

(3) *Applying results of testing.* In a test of compliance with a represented average efficiency:

The average full load efficiency of the sample X, which is defined by

$$\overline{X} = \frac{1}{n}\sum_{i=1}^{n} X_i$$

where X_i is the measured full load efficiency of unit i and n is the number of units tested, shall satisfy the condition:

$$\overline{X} \geq \frac{100}{1 + 1.05\left(\frac{100}{RE} - 1\right)}$$

where RE is the represented average full load efficiency.

17. A new § 431.447 is added to read as follows:

§ 431.447 Department of Energy recognition of nationally recognized certification programs.

(a) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of Section 345(c) of EPCA ("nationally recognized"), the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 431.448. The petition must demonstrate that the program meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of small electric motors continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

(2) It must be independent of small electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to operate a certification system in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–2004 Test Methods A and B, IEEE Standard 114–2001, CSA Standard C390–10, and CAN/CSA Standard C747–09 (incorporated by reference, *see* § 431.443) or similar procedures and methodologies for determining the energy efficiency of small electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) *Standards and procedures.* A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for compliance by small electric motors with energy efficiency standards. It should explain why it believes such relationship would not compromise its independence in operating a certification program.

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* and ISO/IEC Guide 28, *General rules for a model third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories.*

(4) *Expertise in small electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112–2004 Test Methods A and B, IEEE Standard 114–2001, CSA Standard C390–10, and CAN/CSA Standard C747–2009 (incorporated by reference, *see* § 431.443) and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories,* to energy efficiency testing for small electric motors.

(d) *Disposition.* The Department will evaluate the petition in accordance with § 431.448, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as a nationally recognized certification program.

18. A new § 431.448 is added to read as follows:

§ 431.448 Procedures for recognition and withdrawal of recognition of certification programs.

(a) *Filing of petition.* Any petition submitted to the Department pursuant to § 431.447(a), shall be entitled "Petition for Recognition" ("Petition") and must be submitted, in triplicate to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments.* DOE shall publish in the **Federal Register** the Petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a Petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner.* A petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Public announcement of interim determination and solicitation of comments.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue an interim determination on the Petition as soon as is practicable following receipt and review of the Petition and other applicable documents, including, but not limited to, comments and responses to comments. The petitioner shall be notified in writing of the interim determination. DOE shall also publish in the **Federal Register** the interim determination and shall solicit comments, data and information with respect to that interim determination. Written comments and responsive statements may be submitted as provided in paragraphs (b) and (c) of this section.

(e) *Public announcement of final determination.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall as soon as practicable, following receipt and review of comments and responsive statements on the interim determination publish in the **Federal Register** a notice of final determination on the Petition.

(f) *Additional information.* The Department may, at any time during the recognition process, request additional relevant information or conduct an investigation concerning the Petition. The Department's determination on a Petition may be based solely on the Petition and supporting documents, or may also be based on such additional information as the Department deems appropriate.

(g) *Withdrawal of recognition*—(1) *Withdrawal by the Department.* If the Department believes that a certification program that has been recognized under § 431.447 is failing to meet the criteria of paragraph (b) of the section under which it is recognized, the Department will so advise such entity and request that it take appropriate corrective action. The Department will give the entity an opportunity to respond. If after receiving such response, or no response, the Department believes satisfactory correction has not been made, the Department will withdraw its recognition from that entity.

(2) *Voluntary withdrawal.* A certification program may withdraw itself from recognition by the Department by advising the Department in writing of such withdrawal. It must also advise those that use it (for a certification organization, the manufacturers) of such withdrawal.

(3) *Notice of withdrawal of recognition.* The Department will publish in the **Federal Register** a notice of any withdrawal of recognition that occurs pursuant to this paragraph (g).

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Part IV

Department of Health and Human Services

42 CFR Part 71
Requirements for Importers of Nonhuman Primates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2011–0001]

RIN 0920–AA23

Requirements for Importers of Nonhuman Primates

AGENCY: Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: CDC is proposing to amend its regulations for the importation of live nonhuman primates (NHPs) by extending existing requirements for the importation of *Macaca fascicularis* (cynomolgus), *Chlorocebus aethiops* (African green), and *Macaca mulatta* (rhesus) monkeys to all NHPs. Filovirus testing will continue to be required only for Old World NHPs. CDC also is proposing to reduce the frequency at which importers of cynomolgus, African green, and rhesus monkeys are required to renew their registrations, (from every 180 days to every two years). CDC proposes to incorporate existing guidelines into the regulations and add new provisions to address: NHPs imported as part of a trained animal act; NHPs imported or transferred by zoological societies; The transfer of NHPs from approved laboratories; and Non-live imported NHP products. CDC is also proposing that all NHPs be imported only through ports of entry where a CDC quarantine station is located.

DATES: Submit written or electronic comments by March 7, 2011.

ADDRESSES: Written comments, identified by Docket No. xxx, may be submitted to the following address: Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, ATTN: NHP Rule Comments, 1600 Clifton Road, NE., (E03), Atlanta, GA, 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road, NE., Atlanta, GA 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. Comments also may be viewed at *http://www.cdc.gov/ncidod/dq.* Written comments may be submitted electronically via the Internet at *http://www.regulations.gov* or via e-mail to *NHPPublicComments@cdc.gov.* All comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the rule, access *http://www.regulations.gov.*

Mail written comments on the proposed information collection requirements to the following address: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for CDC.

FOR FURTHER INFORMATION CONTACT: Ashley A. Marrone, J.D., U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, 1600 Clifton Road, NE., Mailstop E–03, Atlanta, GA 30333, Telephone, 404–498–1600.

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I. Background

A. What is the risk to human health from nonhuman primates?

Nonhuman primates (NHPs), particularly those recently captured in the wild, may harbor agents infectious to humans. Although such infectious agents, if present, are usually detectable in the NHP's blood, they also may be detected in secreted bodily fluids such as urine, feces, or saliva. Due to the nature of their work, persons working in temporary and long-term holding facilities and those involved in transporting NHPs (*e.g.,* cargo handlers and inspectors) are especially at risk for infection. NHPs are a potential source of pathogens and communicable or zoonotic disease that may be fatal to humans, including filoviruses, hepatitis, herpes B virus, tuberculosis, and parasitic infections (1). A zoonotic disease is any infectious agent or communicable disease that is able to be transmitted from animals, both wild and domestic, to humans. A filovirus is a virus that can cause severe hemorrhagic fever in humans and nonhuman primates, such as Ebola virus and Marburg virus. Some *Macaca fascicularis* (cynomolgus), *Chlorocebus aethiops* (African green), and *Macaca mulatta* (rhesus) monkeys imported into the United States have been infected with a filovirus (2). An epidemiologic link between hepatitis A infections in NHPs, especially chimpanzees, and their caretakers has been demonstrated (3). Herpes B virus is a zoonotic agent that naturally infects only macaque monkeys. However, while Herpes B virus infection is generally asymptomatic or mild in macaque monkeys, it can cause fatal encephalomyelitis in humans. Previously reported cases of herpes B virus disease in humans usually have been attributed to NHP bites, scratches, or percutaneous (through the skin) inoculation with infected materials (4). NHPs, especially macaques, are highly susceptible to tuberculosis, and most are imported from areas of the world with a high prevalence of tuberculosis in humans and NHPs (5). NHPs may also be a source of yellow fever virus, which can be transmitted to humans by mosquitoes that have fed on an infected

NHP (6). In fact, transmission of yellow fever to humans in NHP research work has occurred in this manner (7). NHPs imported into the United States from foreign countries often have an uncertain health history, and may potentially harbor diseases infectious to humans. Quarantine requirements for imported NHPs are designed to reduce this communicable disease risk.

B. What is the legal authority for this rulemaking?

Section 361 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of the Department of Health and Human Services (HHS) to make and enforce regulations as the Secretary deems necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or from one State or possession to another. Section 361 of the PHSA further provides that such regulations may provide for the carrying out and enforcement of measures to protect public health, including inspection and destruction of animals or articles found to be so infected or contaminated as to constitute dangerous sources of infection to humans. Section 361 of the PHSA serves as the primary legal authority for 42 CFR 71.53, regarding the importation of NHPs.

Section 368 of the PHSA (42 U.S.C. 271) sets forth penalties for violations of any regulations prescribed under section 361 of the PHSA. Under section 368(a) of the PHSA, any person who violates a regulation prescribed under section 361 of the PHSA may be punished by a fine up to $1,000 or by imprisonment for up to 1 year, or both [42 U.S.C. 271(a)]. These penalties are strengthened under the sentencing classification provisions of 18 U.S.C. sections 3559 and 3571, which provide for more strict penalties for criminal violations that would otherwise be classified as Class A misdemeanors. Individuals may be punished by a fine of up to $100,000 per violation if death of a person has not resulted from the violation or up to $250,000 per violation if death of a person has resulted from the violation [18 U.S.C. 3559, 3571(b)]. Organizations may be fined up to $200,000 per violation not resulting in death and $500,000 per violation resulting in death [18 U.S.C. 3559, 3571(c)]. These penalties are criminal in nature and would be imposed by a court, and not administratively by HHS or CDC.

C. What is the history of this rulemaking?

CDC regulations regarding the importation of NHPs were developed to address the risk NHPs pose to humans. Since October 10, 1975, CDC, through 42 CFR 71.53, has prohibited the importation of NHPs except for scientific, educational, or exhibition purposes. For the purpose of importing NHPs, CDC has defined scientific and educational purposes as those conducted at the university level or equivalent (*e.g.* use in breeding colonies and the advancement of medicine). Exhibition purposes is defined as the use of NHPs as part of a public display open to the general public during routinely scheduled hours in a facility that meets or exceeds the accreditation standards of the Association of Zoos and Aquariums (AZA), or in a comparable facility. For example, if an importer or facility proposes to exhibit the NHPs for one day a month and only to friends and family, this would neither meet nor exceed AZA accreditation standards and therefore the facility would not qualify as an importer for exhibition purposes. However, if an importer or facility proposes to exhibit the NHPs to the general public at a zoo during routinely scheduled hours, that importer may qualify as an importer for exhibition purposes. Some institutions may fall under more than one category of importer. For example, if an established zoo applies for a permit to import a live NHP for display, it would be considered an importer for exhibition purposes. On the other hand, if the zoo employs researchers and requests a permit so that staff can perform behavioral psychology studies, for example, it would be considered an importer for scientific purposes.

Under this regulation, NHP importers are required to register with CDC; this registration must be renewed every two years. NHPs are required to be held in quarantine for at least 31 days following entry into the United States. This regulation also requires importers to maintain records on imported NHPs and to immediately report illness suspected of being communicable to humans. Importers must make their facilities, vehicles, equipment, and business records used in the importation of NHPs available to CDC during operating business days and hours, and at other "necessary and reasonable times," to enable CDC to ascertain compliance with the regulations in this section. These "necessary and reasonable times" may include an outbreak or other threat to public health that requires immediate and unobstructed access to an importer's facilities.

Additional requirements for importers of NHPs have been developed and implemented in response to specific public health threats. On January 19, 1990, in response to the identification of Ebola virus (Reston strain) in NHPs imported from the Philippines, CDC published interim guidelines for handling NHPs during transit and also during quarantine (2). Importers were informed by letter from the Director on March 15, 1990, that they must comply with specific isolation and quarantine standards for continued registration as an importer of NHPs under 42 CFR part 71 (8).

On March 23, 1990, CDC invited the public to comment on new guidelines for the importation of NHPs and the potential impact of a temporary ban on the importation of cynomolgus monkeys into the United States (9). After considering information received at this public meeting, coupled with an April 4, 1990, confirmation of asymptomatic Ebola virus infection in four NHP caretakers and serologic findings suggesting that cynomolgus, African green, and rhesus monkeys posed a risk for human filovirus infection, CDC concluded that these three species were capable of being an animal host or vector of human disease (10).

On April 20, 1990, CDC published a notice in the **Federal Register** requiring a special permit for importing cynomolgus, African green, and rhesus monkeys (11). To be granted a special permit, importers must submit a plan to CDC describing specific isolation, quarantine, and communicable disease control measures. The plan must detail the measures to be carried out at every step of the chain of custody, from embarkation at the country of origin, through delivery of the NHPs and the completion of the required quarantine period. Additional requirements include detailed testing procedures for all quarantined NHPs to rule out the possibility of filovirus infection. When importers demonstrate compliance with these special-permit requirements, CDC authorizes continued shipments under the same permit for a period of 180 days. Certain components of the special-permit requirement have changed slightly in response to surveillance findings and the development of improved laboratory tests. As indicated in the 1990 notice, importers were informed of these changes by letter from CDC (12). The current special-permit notice requires filovirus antigen testing on specimens from any NHP that dies during quarantine for reasons other than trauma. Antibody testing is also

required on surviving NHPs that exhibit signs of possible filovirus infection before the cohort is released from quarantine (13).

On July 30, 1993, CDC published guidelines in the Morbidity and Mortality Weekly Report (MMWR) for tuberculosis testing requirements for NHPs, following the recognition of tuberculosis in up to 2% of imported NHPs and the risk for infection posed to caretakers (5). These published guidelines include provisions for recordkeeping to track and trace nonhuman primates and use of personal protective equipment by NHP handlers to prevent transmission of tuberculosis (5). Since publication of the guidelines in the MMWR, importers have submitted a minimum of three negative tuberculin skin tests (TSTs) administered at two-week intervals on each imported NHP, before CDC has agreed to release of any NHPs from quarantine.

II. Proposed Rule Requirements

A. What is the scope of this proposed rule?

This proposed rule applies to any person importing a live NHP into the United States, including existing importers, any person applying to become a registered importer, and any person importing NHP products. Importers must make their facilities, vehicles, equipment, and business records used in the importation of NHPs available to CDC for inspection during operating business days and hours, and at other necessary and reasonable times, to enable CDC to ascertain compliance with these regulations. Nothing in this proposal supersedes or preempts enforcement of emergency response requirements imposed by statutes or other regulations.

B. Does the proposed rule continue the general prohibition on importing live NHPs except for science, education, or exhibition purposes?

Yes, it does. In § 71.53(d), CDC would continue the long-standing general prohibition in the current regulation on importing live NHPs except for science, education, or exhibition purposes. This prohibition extends to the importation of non-human primates intended for use as service animals. On July 23, 2010, Attorney General Eric Holder signed final regulations revising U.S. Department of Justice regulations under the Americans with Disabilities Act (ADA), which included a revised definition of "service animal." Effective February, 2011, these regulations limit the definition of service animals to dogs. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. CDC has carefully considered the potential risks associated with the use of imported nonhuman primates as service animals and agrees with the position of the U.S. Department of Justice that nonhuman primates should not be recognized as service animals because of their potential for disease transmission and unpredictable aggressive behavior.

C. What new and revised definitions is CDC proposing in regard to importers of NHPs?

In this NPRM, CDC has developed a list of definitions specific to modern importation principles and practices for NHPs. These definitions either do not appear in the current 42 CFR 71.53, or have been revised, and are intended to add clarity to the provisions regulating the importation of NHPs. CDC is soliciting public comment on these definitions. Of particular importance to this proposal are the definitions for animal act, breeding colony, broker, cohort, importer, in transit, lab or laboratory, medical consultant, offspring, Old World NHP, permitted purpose, quarantine facility, quarantine room, trophy, zoo, and zoonotic disease.

D. What expanded requirements apply to importers of NHPs?

CDC is proposing to expand the isolation, quarantine, and worker protection requirements, as well as the registration process, currently described in the special-permit requirements for cynomolgus, African green, and rhesus monkeys to all importations of NHPs. The proposed changes will simplify importer registration procedures by eliminating the need for a separate category of importer that must request special permits (those that import cynomolgus macaques, Rhesus macaques, and African green monkeys). The proposed changes will also provide an enhanced measure of worker and NHP safety against known and emerging zoonotic diseases. Under proposed provision (g)(1), to register as an importer, an individual must submit to CDC a completed application form, a completed statement of intent describing the number and types of NHPs intended for import during the registration period, a copy of all written Standard Operating Procedures (as specified in the NPRM), a copy of any current registrations, licenses, and/or permits that may be required from the U.S. Department of Agriculture and U.S. Fish and Wildlife Service, and a signed, self-certification stating that the importer is in compliance with the regulations contained in this section and agrees to continue to comply with these regulations. Upon receiving the above application and documentation required (as proposed in section (g)(2)), CDC will review the application and grant or deny the application for registration as an importer. The timeframe between acceptance of the application, and either approval or denial, will generally be 30 to 60 calendar days, during which time CDC may consult with the applicant regarding any element of the application or accompanying documentation.

E. What is a performance-based standard?

A performance-based standard states goals and objectives to be achieved and describes methods that can be used to demonstrate whether or not processes, products, and services meet the specified goals and objectives. In contrast, a prescriptive standard typically prescribes materials, design and construction methods without stating goals and objectives. A performance-based standard focuses on desired characteristics of the final product, service, or activity rather than requirements for the processes to produce it. Performance-based standards allow users flexibility in choosing materials (such as which products to use for disinfection), design (such as the use of squeeze-back cages for controlling animals), and services (such as the use of off-site, contractual occupational health services for workers). An example of a performance-based standard is the Occupational Safety and Health Administration's Hazard Communication Standard (HCS), 29 CFR 1910.1200. CDC proposes to primarily use a performance-based standard in reviewing and approving applications for individuals to become registered importers of NHPs into the United States and is soliciting public comments on this approach.

F. What documentation requirements apply to importers of NHPs?

The utility of the special permit requirements in quickly detecting and controlling filovirus was illustrated by the early and effective detection of Ebola virus in imported cynomolgus monkeys in 1996. The special permit and other disease control requirements were effective in promptly identifying the filovirus infection, minimizing NHP exposure, and preventing spread of the infection beyond the room housing the original infected NHP (14). For these reasons, CDC is also proposing that filovirus testing be expanded to include

all Old World NHPs (as defined in proposed provision (c)(2)) in quarantine that have illness consistent with filovirus or that die for any reason other than trauma. The proposed changes would allow for surveillance of filovirus infection in other Old World primates, such as chimpanzees, gorillas, baboons, drills, and mandrills, which are known to be susceptible to infection but are not addressed by the current special permit requirements (unpublished data, CDC; 15–18).

Consistent with the current special permit requirements, under proposed provision (h), an importer of NHPs must have a written policy that imported NHPs and their offspring will only be used and distributed for permitted purposes, as defined in proposed subsection (a), and document the intended purpose for the imported NHPs. An importer must also retain records documenting the identity of any recipients, the number of NHPs in each shipment or sale, and the dates of each shipment or sale. An importer must keep written certifications demonstrating that the NHPs and any offspring will continue to be used for permitted purposes. CDC is proposing to require the importer to maintain such documentation to ensure that these NHPs are not diverted into the pet trade and subsequently place individuals at risk of contracting zoonotic diseases. This record retention requirement would apply to any transfer of the NHP from the quarantine facility and any subsequent transfers. CDC is soliciting public comment on the proposed record retention requirement to learn whether the burden to importers outweighs the benefit to public health. Specifically, CDC is soliciting comment on how long records should be maintained by the importer, *e.g.,* for the expected life of the NHP.

Proposed subparagraph (h) also proposes to require the importer to maintain these records in an organized manner and either electronically or in a central location, at or in close proximity to the NHP facility, to allow CDC to inspect the records during CDC site visits during regular business hours or within one hour of such visits. Before distributing or transferring an imported NHP, an importer must communicate to the recipients of NHPs, in writing, the restrictions and definitions of permitted purposes and obtain written certifications from the intended recipient that the NHPs will be used and distributed for one of the permitted purposes before the NHPs are sent to them. CDC is soliciting public comments on these proposed requirements.

G. What are the requirements for a worker protection plan and personal protection equipment?

In accordance with good public health practice, HHS/CDC recommends that all workers who are at high risk of exposure to NHPs be current on routine vaccinations including but not limited to Hepatitis B, tetanus, and measles vaccines. As part of the NPRM, in provision (i), CDC is proposing to require that importers have a written worker protection plan for anyone whose duties may result in exposure to NHPs. The proposed protection plan is designed to ensure that individuals who work in close proximity to NHPs are educated on the risks and protected from exposure to zoonotic diseases. For the purposes of enforcement of this provision CDC considers "exposure" to be a well-understood term in the NHP importing community, generally meaning in direct contact or sufficiently close proximity to a NHP (≤ 5 feet) that NHP bodily fluids could be transferred between the NHP and the worker. "Exposure" also refers to worker exposure to respiratory pathogens (*e.g., Mycobacterium tuberculosis*) for workers in proximity to a NHP (≤ 5 feet). However, CDC is soliciting public comment on provisions which use this term and welcomes input on ways which may add clarification to its meaning. Using the performance-based standard described above, CDC will evaluate the importer's worker protection plan and determine whether the proposed worker protection program is sufficient to protect workers from exposure to zoonotic diseases.

Under proposed subsection (i) an importer must contact CDC immediately by telephone to report any instance of a worker contracting a potential zoonotic disease, and must include specific instructions for contacting CDC in its worker protection plan. Also included in the worker protection plan must be procedures to protect and train transport workers from exposures to communicable disease; hazard evaluation and worker communication procedures; personal protective equipment (PPE) requirements; tuberculosis requirements; if applicable, SOPs that adhere to requirements relating to macaques as described in paragraph (i)(7); an infection-prevention program; SOPs that include requirements for preventing workplace infection from potentially contaminated needles or other sharp instruments; SOPs requiring that used disposable sharp items are placed in puncture-resistant containers kept as close to the work site as practical; SOPs requiring that removed, disposable PPE be disposed of as biohazardous waste; and that nondisposable clothing worn in the quarantine facility be disinfected on site before laundering. CDC is soliciting public comments on these provisions.

To further ensure worker safety from communicable disease, subsection (i) also includes certain specific post-exposure requirements to be included in the worker protection plan, such as an infection prevention program that requires NHP handlers to cleanse all bites, scratches, and/or mucosal surfaces or abraded skin exposed to blood or body fluids immediately and thoroughly.

The worker protection plan also places requirements upon the importer to provide exposed workers with direct and rapid access to a medical consultant, and to document the frequency of worker training and education on potential risks of exposure to NHPs. CDC is specifically soliciting comment on the appropriate frequency of such worker training and education programs. As part of the worker protection plan described in proposed subparagraph (i), an importer must establish, implement, and maintain hazard evaluation and worker communication procedures. Such procedures for employees working in the quarantine facility shall include the following: a description of the known zoonotic disease and injury hazards of handling NHPs; the need for PPE in handling NHPs and training in proper use of PPE, including re-training and reinforcement of appropriate use; procedures for monitoring workers for signs of zoonotic illness; and procedures for disinfection of garments, supplies, equipment, and waste (1–5, 7, 10, 11, 14, 19–21).

As part of the worker protection plan described in this subsection (i), an importer must identify the PPE required for each task or working. Proposed § 71.53(i)(5) describes requirements in the worker protection plans for PPE, including face shields or eye protection and respiratory protection (such as N95, or powered air-purifying respirator (PAPR)) that is compliant with OSHA 29 CFR § 1910.134 which requires a respiratory protection program. Face shields are important for preventing droplet splashes to the head from running down into the eyes and preventing mucous membrane exposure around the edges (sides, top, and bottom to below the chin).

For tuberculosis protection, CDC is proposing that an importer be required to ensure that workers in a facility housing NHPs have a baseline tuberculosis test prior to beginning work

with NHPs and, at least annually, a tuberculosis skin test. Tuberculosis is an illness which can potentially be transmitted either from NHP to human, or from human to NHP. The purpose of this requirement is to protect the NHPs from exposure to tuberculosis from the workers as well as to monitor potential exposure of the workers to tuberculosis from the NHPs. A baseline tuberculosis test is typically conducted before the employee begins working with NHPs to ensure that the employee does not already have active or latent tuberculosis. A Mantoux tuberculosis skin test is the most common diagnostic test used for humans to detect tuberculosis exposure.

Proposed § 71.53(i)(3)(xii) describes herpes B virus post-exposure procedures that would be required as part of worker protection plans for registered importers who import macaques. For protection against herpes B virus, CDC is proposing in this subsection that an importer must develop, implement, and adhere to a written PPE program to prevent herpes B virus transmission.

CDC is also proposing to require that the worker protection program include a thorough hazard assessment of all work procedures, potential routes of exposure (*e.g.,* bites, scratches, or mucosal exposures), and potential adverse health outcomes. Workers must also be assured prompt and direct access to a medical consultant, defined in the proposed rule as an occupational health physician, physician's assistant or a registered nurse, who is knowledgeable about the risks to human health associated with NHPs. The medical consultant in this proposed provision may either be an employee of the quarantine facility or a contractor, but must be readily available and aware of the potential zoonotic risks involved in working with NHPs. CDC is seeking comment on this proposed requirement. Additionally, CDC is proposing to require all importers to maintain records of all serious febrile illnesses [fever greater than 101.3 degrees Fahrenheit (38.5 degrees Celsius) for more than 48 hours] in workers having been exposed to NHPs in transit or in quarantine. CDC is proposing to require that the record of febrile illnesses be kept indefinitely by the importer as part of the worker's medical records, and is soliciting public comment on whether this requirement would pose an undue burden upon the importer as to outweigh the benefit to public health and the health of the individual.

If macaques are being imported under this provision, the proposed worker protection requirements would also include provisions related to exposure to herpes B virus (*Cercopithecine herpesvirus*) because of the unique risk of herpes B virus transmission associated with macaques. Most cases of herpes B virus disease in humans have been attributed to NHP bites, scratches, or percutaneous inoculation with infected materials. However, a report of a fatal case of herpes B virus infection caused by mucosal splash exposure occurred in 1998, lead to the development of CDC recommendations in 1999 for preventing and treating herpes B virus exposure (19).

In addition to complying with the proposed requirements of this section, an importer must continue to comply with all relevant Federal and State requirements relating to occupational health and safety. CDC is soliciting public comment on these additional proposed requirements.

H. What are the proposed requirements for NHP quarantine?

The proposed requirements state that importers must quarantine all NHPs for at least 31 days after arrival at a quarantine facility in the U.S. This time period may be extended in the event that the NHPs are infected with certain communicable diseases (such as tuberculosis, shigella, measles, campylobacter), the importer or CDC suspect a NHP may be infected with certain communicable diseases, or if the importer or CDC determines that there is a need for additional diagnostic testing. The NHP will remain in quarantine until the CDC determines that it no longer poses a threat to human health. These requirements minimize the risk to persons exposed to imported NHPs by preventing an infected NHP from premature release from quarantine.

The proposed rule directly addresses the two major reasons for quarantining recently imported NHPs. The first major reason is to provide the earliest recognition of the importation of a zoonotic disease with potential public health importance. The second is to prevent transmitting infectious agents between NHPs or from NHPs to humans. The proposed procedures and standards contained in § 71.53(l) are essential to minimize the risk of transmitting infectious agents between NHPs and from NHPs to humans in quarantine facilities. CDC has based these procedures and standards on National Research Council (NRC) guidelines, CDC biosafety guidelines, current knowledge of infectious agent transmission routes and, experience gained from investigating filovirus infection outbreaks (14, 22). These requirements are in addition to U.S. Department of Agriculture (USDA) regulations in 9 CFR parts 1 through 3 on Animal Welfare, and Fish and Wildlife Service regulations in 50 CFR part 14 on Importation, Exportation, and Transportation of Wildlife. Section 71.53(l)(1)(ii) requires the use of commonly accepted industry standards for the design and operation of animal holding facilities and the care and use of laboratory animals. Examples of minimum acceptable industry standards include those found in the current editions of NRC's "Guide for the Care and Use of Laboratory Animals" (20) and the CDC/NIH's "Biosafety in Microbiological and Biomedical Laboratories" (21).

We have written the proposed facility and procedural requirements to apply to all NHP importers. We intend these requirements to protect NHPs, facility workers, and others from a variety of potential pathogens and to be adaptable to changing needs. We would further require importers to incorporate the essential features of each applicable proposed requirement into written policies and procedures for employees. Proposed § 71.53(g)(1) requires an importer to establish, implement, and maintain documentation and standard operating procedures (SOPs) associated with the importation of NHPs, and proposed § 71.53(b)(3) requires the importer to make the records available to CDC for inspection during the life of the NHP, so that we may ascertain compliance with the regulations. To facilitate inspection, records should be maintained electronically or in a location in close proximity to the quarantine facility and in an organized manner. CDC is specifically soliciting comment on these proposed record-keeping requirements.

Proposed § 71.53(i) and § 71.53(l) address routine veterinary medical care and screening for zoonotic diseases of NHPs in quarantine and management of illnesses and deaths of unknown etiology. Appropriate screening or diagnostic tests may differ by species, country of origin, clinical presentation of ill NHPs, and necropsy findings. Therefore, in these regulations, it is proposed that importers be required to maintain direct and immediate access to both a veterinarian experienced in the care of NHPs and a qualified (*i.e.,* licensed or certified) laboratory. CDC is soliciting public comments on this provision. Specifically, we hope to obtain feedback on what factors should be taken into consideration in the determination of whether a veterinarian is sufficiently "experienced" in the care of NHPs and what factors constitute a "qualified" laboratory. This provision

also proposes to require that importers maintain written protocols for the evaluation and diagnostic testing of suspect cases of zoonotic disease in NHPs. At a minimum, an importer's written protocols must include diagnostic testing for the infectious agents for which reporting is required under these regulations and a plan for evaluating unusually high morbidity or mortality rates in a shipment of NHPs.

Proposed section 71.53(l)(1) of the quarantine requirements addresses monitoring and testing NHPs for tuberculosis (TB). In July 1993, CDC published in the *MMWR* a review of TB in imported NHPs over a three-year period (5). Because TB in captive NHPs is both an animal and a human health problem, NHP importers routinely provide a tuberculin skin test (TST) for NHPs and workers. According to the *MMWR,* an importer must consider any NHP with a positive TST during import quarantine as infectious and as representing a high risk for disease transmission. Therefore, when an importer identifies a quarantined NHP as TST-positive, the standard practice according to the *MMWR* recommendation is to euthanize the NHP, attempt laboratory confirmation of TB, and reinstitute tuberculin skin testing of all other exposed NHPs at two-week intervals, with quarantine until five consecutive negative TSTs are completed in the quarantined NHPs.

CDC considers all NHPs to be susceptible to TB; virtually all are imported from areas of the world with high prevalence of TB in humans and NHPs. Close confinement of these and other NHPs in holding facilities (including quarantine) and shipping crates fosters conditions where one infected NHP might infect many others. Therefore, each NHP in a cohort in quarantine must complete negative TSTs before any are released.

Because there is the potential for transmitting TB and other pathogens among NHPs and humans, improved surveillance and testing procedures are essential in NHP quarantine and research facility settings. Paragraphs § 71.53(i)(6) and (l)(2) of the proposed rule include worker protection and quarantine requirements regarding TB. Proposed § 71.53(l)(2)(ix) requires an importer to conduct three TSTs, with at least two weeks between tests, before releasing NHPs from import quarantine. If any NHP in the cohort has a positive or suspicious TST reaction (as defined by Institute of Laboratory Animal Resources [ILAR] standards [25]), the importer must keep the cohort in quarantine and must administer at least five additional TSTs following removal of the last affected NHP. Proposed § 71.53(l)(5)(iv) provides that for any necropsy of an NHP dying during quarantine, the importer must ensure that the necropsy is performed under biosafety level 3 (BSL3) or biosafety level 2 (BSL2) with enhanced protective equipment and procedures to protect against exposure to highly infectious agents.

Proposed § 71.53(m)(6) requires an importer to report to CDC within 48 hours any positive or suspicious TST results, necropsy findings, or laboratory results.

I. What are the proposed requirements for SOPs and equipment for crating, caging, and transporting NHPs?

In this proposed provision, the importer bears responsibility for ensuring that all infection control measures are in place throughout the transportation of the cohort, not just after the NHPs reach a licensed quarantine facility in the United States. Physical custody of NHPs may be transferred several times during transportation (*e.g.,* from exporter to airline to importer). However, because the registered importer selects the supplier at the country of origin and arranges for transportation to the United States, CDC expects the importer to exert control over the conditions under which the NHPs are shipped. CDC considers this provision to be part of the performance-based approach and the intent is for CDC to work with the importer to identify procedures that are effective in preventing communicable disease spread. Proposed § 71.53(j) outlines the requirements that the importer must meet, either directly or by contractual or other arrangement, to ensure safe handling of NHPs during transportation. In the combined proposed requirements for crating, caging, and transporting, we emphasize the infection control-related aspects of shipping NHPs, including procedures to prevent contamination of other articles and cargo during transportation, to provide physical separation of crates from other cargo, and to decontaminate aircraft, ships, vehicles, and related equipment following transport. An importer must meet these requirements in combination with all applicable sections of other Federal and international regulations and guidelines, such as the International Air Transport Association "Live Animal Regulations," which have been adopted by U.S. Fish and Wildlife Service (23) and the World Health Organization's "Transport of Infectious Substances" (24). Certain procedures such as planeside transfers and expedited clearances may require oversight and/or inspection by CDC to ensure implementation of CDC's requirements and guidelines. Therefore, in § 71.53(f), CDC proposes to restrict entry of NHPs into the United States to those ports of entry where CDC quarantine stations are located, except in limited circumstances approved in advance by CDC. These circumstances may include situations involving ground transport across the U.S. border and charter aircraft transport arriving through airports that do not have quarantine stations. CDC is working with the stations to enhance the training and response capability of the staff. The CDC quarantine stations operational at ports of entry and border crossings are currently listed at: *http://www.cdc.gov/ncidod/dq/quarantine_stations.htm.* This listing will be updated if more stations are added in the future.

J. What are the requirements for ground transport vehicles?

When a shipment of NHPs arrive at a U.S. port of entry via aircraft, special vehicles must be used to transport the NHPs safely to a quarantine facility and ensure that these pre-quarantined NHPs do not pose a risk to human health. Likewise, a specialized ground transportation vehicle should be used when a shipment of NHPs enters the U.S. via a land border crossing, destined for a quarantine facility. To ensure vehicles contain proper safeguards, in proposed subparagraph (k), CDC is proposing that an importer be required to establish, implement, maintain, and adhere to SOPs for ground transport vehicles transporting NHPs. CDC is soliciting public comments on these proposed requirements.

K. What are the health reporting requirements for NHPs?

Under proposed § 71.53(m), an importer would have to ensure that CDC is notified of the occurrence of any of six events listed in the paragraph. An importer must report to CDC within 24 hours of discovering the severe illness or death of NHPs in a quarantine facility; an illness in an NHP that the importer reasonably suspects is yellow fever, monkey pox, or filovirus disease; or of an NHP testing positively for filovirus virus antigen or antibody. An importer must report to CDC within 48 hours, any positive or suspicious tuberculin skin test results, necropsy findings, or laboratory results. These reports may be by telephone.

An importer must report promptly to CDC if the mortality for a shipment exceeds 5 percent. The period runs from the time of embarkation from the country of origin to the release of the

shipment's animals from quarantine. The report must include the cause of death of each NHP. This report may be by telephone. Finally, the importer must ensure that CDC receives a written report from the quarantine facility's licensed veterinarian of the health status of a shipment after the quarantine period is complete, but before the importer releases any NHP, cohort, or mixed cohort.

Any report CDC requires in this section must include a copy or summary of the individual NHP's health records.

L. What are the requirements for recordkeeping and reporting?

In addition to the NHP health reporting requirements in § 71.53(m), CDC proposes 19 general reporting and recordkeeping requirements in § 71.53(n), with which the importer must comply in writing at least 7 days before it imports a shipment of NHPs. Among these requirements is supplying information that will help authorities identify named individuals, businesses, shippers, and carriers importing NHPs who are responsible for the NHPs at every leg of the transportation process from the time a shipment leaves the country of origin to the time the animals arrive at a licensed quarantine facility.

CDC also will require importers to provide information to identify the specific vehicles or aircraft used to transport these animals, the quarantine facility for which the animals are destined, methods of identifying individual NHPs, and similar information. CDC is soliciting comment on these proposed requirements.

M. What are the requirements for animal acts; zoo-to-zoo transfers; and lab-to-lab transfers?

Under proposed § 71.53(o)(1), an importer must register with CDC all foreign-based animal acts that include a NHP. This provision would require the importer to provide information and documentation to help identify the individual animal and to describe the conditions under which the NHPs are housed in the United States. Other requirements include documentation signed by a licensed veterinarian attesting to the results of physical examinations of NHPs. The exams must address routine elements and tests for conditions specified in the regulations. Under proposed § 71.53(o)(2), an importer must meet specified requirements for U.S.-based animal acts containing NHPs when the animal re-enters the United States after export. The requirements in § 71.53(o) are in addition to those documentation requirements in proposed § 71.53(g).

For those NHPs entering the U.S. under the zoo-to-zoo and laboratory-to-laboratory transfers exception, proposed § 71.53(p) and (q) require the recipient zoo or laboratory within the United States to submit veterinary medical records documenting a NHP's current and past health history. To qualify for these exemptions, both the recipient and transferring zoos must be accredited by the Association of Zoos and Aquariums (AZA) (or equivalent if outside of the U.S.) and the labs or laboratories must both be accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC) or licensed by USDA. In addition to the requirement itself, CDC is soliciting public comment on these provisions to ascertain what standards or factors should be considered in reaching the determination that a zoo located outside of the U.S. is "equivalent" to an AZA accredited facility for it to qualify for an exemption under this provision. Further, § 71.53(q) is available only to those NHPs from a lab that has both a foreign-based and United States-based facility and that are part of an ongoing, institutionally approved research project. Adequate justification must also be provided to CDC describing the reason a transfer to a U.S. laboratory is necessary (*e.g.,* diagnostic equipment only available in the U.S.-based laboratory).

N. What are the requirements for in-transit shipments of NHPs?

Under § 71.53(r), CDC is proposing to add requirements for brokers in the U.S. regarding the handling of in transit shipments of NHPs that have a layover or are detained or delayed at a U.S. airport. Because there is the potential for human exposure or other cargo contamination from NHPs with diseases of public health concern while located in the United States, in transit shipments must be housed and cared for in a manner consistent with requirements for NHPs intended for import into the United States as specified in paragraphs 71.53(j) and 71.53(k) of this section. CDC is soliciting comment on these new proposed requirements for brokers.

O. What procedures are being proposed for revocation and reinstatement of an importer's registration?

Under § 71.53(s), CDC is proposing new procedures for revocation and reinstatement of an importer's registration. Under these procedures, a registration may be revoked upon notice to the importer if the Director determines that the importer has failed to comply with any of the applicable provisions of this section. The importer may request a written record review by the Director by filing a response within 20 calendar days of receiving our notice. The Director will review the written record and issue a decision in writing to affirm the revocation or reinstate the importer's registration. As a condition of reinstating the registration, the Director may require inspection of facilities, examination of records, and other assurances of compliance with CDC's requirements. The Director's written decision shall constitute final agency action.

P. What are the requirements for importing NHP products?

Because of the risk to human health of untreated NHP products such as carcasses, trophies, blood, and other biological samples, CDC is also adding a permit requirement under proposed § 71.53(t) for importing these products. Under this provision, a permit is not required if the product has been rendered non-infectious by one of the approved methods. HHS/CDC has selected this prescribed manner of rendering a product non-infectious because it has proven to be efficient and effective in protecting public health. However, a permit will be required if the product is untreated. An untreated product without an accompanying permit will be considered a potential health hazard and may be seized for destruction upon arrival at the port of entry. This permit requirement applies to individuals importing trophies for their own personal use as well as businesses importing trophies for a commercial purpose, with the intent to resell to the public.

Q. Is there an appeal process for a denied application to import?

Yes. HHS/CDC proposes new subsection (u) to provide importers with an opportunity for a written appeal in the event that the Director denies a request for a permit to import a NHP for bona fide scientific, exhibition, or educational purposes, NHP products that have been rendered noninfectious, or an application to become an importer. Under the proposal, a person who wishes to make such an appeal would have two business days after receiving the denial to submit the appeal. CDC would issue a written response, which would constitute final Agency action. HHS/CDC invites comments on this process.

III. Regulatory Analyses

A. Economic Analysis

CDC has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity. Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and Tribal governments in the aggregate or by the private sector of $100 million in any one year (adjusted annually for inflation). CDC has analyzed the rule and has determined that it is consistent with the principles set forth in the Executive Order and these statutes.

This proposed rule is not a significant regulatory action as defined by the Executive Order. This regulatory action is not a major rule under the Congressional Review Act. In our screening analysis under the Regulatory Flexibility Act, CDC also concludes that the rule will not have a significant economic impact on a substantial number of small entities. UMRA does not require CDC to prepare a statement of costs and benefits for this proposed rule because we do not expect the rule to result in any one-year expenditure that would exceed $100 million adjusted for inflation.

1. Objectives and Basis for the Action

Our principal objectives in this proposed rule are to consolidate and codify requirements for infection control and worker safety procedures to prevent transmitting pathogens from NHPs to humans. The proposed requirements for developing an operating plan and SOPs will ensure that facility-specific documents outlining quarantine and other operations, personnel training, and worker health programs are in place before NHPs are imported into the United States.

2. The Nature of the Impacts

The proposed rule would consolidate CDC's import requirements into one regulatory section thus easing the burden on importers. The rule would expand the requirements for importing cynomolgus, rhesus, and African green monkeys to all NHPs, with the exception of filovirus testing, which would be required only for Old World NHPs, but allow importers of those three species to renew their registrations every two years, rather than every 180 days. CDC proposes to incorporate into the rule, our interim NHP guidelines, requirements for NHP imports as part of a circus or trained animal act or a zoo-to-zoo or laboratory-to-laboratory transfer, as well as restrictions on which ports of entry an NHP may be imported into the United States.

3. Baseline

Economic analysis of a regulatory action requires as a first step identifying a baseline, which is a depiction of the world in the absence of any action. CDC uses this baseline to calculate the effects of new regulation. In this action, CDC proposes to codify guidelines, registration requirements, notices, and permitting procedures that have been in effect since 1990. In January 1990, CDC published interim guidelines for handling NHPs during transit and quarantine (2). In March 1990, CDC notified all importers that that their compliance was required with the transit, isolation, and quarantine standards for continued registration and that CDC would subject registered importers to unannounced inspections of quarantine facilities. In April 1990, CDC implemented a special permitting procedure for importing cynomolgus, African green, and rhesus monkeys (9).

These administrative requirements differ only slightly from the requirements CDC proposes today; the proposed rule merely formalizes, clarifies, and makes minor changes in existing administrative requirements. Therefore, the proposed rule has little impact on costs and benefits relative to the baseline of existing practices. In this analysis, CDC estimates incremental costs and benefits relative to that baseline, and also provides background on the health benefits that motivated the administrative actions taken in 1990.

In general, CDC intends that the proposed rule will preserve the health benefits of current practices, while reducing some costs for the regulated community. Specifically, the proposed rule would reduce costs in two ways. First, CDC proposes to reduce the frequency of registration renewal for importers of cynomolgus, rhesus, and African green monkeys from every 180 days to every 2 years, consistent with registration requirements for importers of other NHPs. This change would reduce administrative cost burdens for importers of cynomolgus, rhesus, and African green monkeys.

Second, CDC proposes to eliminate the 31-day quarantine requirement for transfers of NHPs into the United States between accredited zoos, such as those accredited by the Association of Zoos and Aquariums (AZA) (or its equivalent) (*i.e.,* "zoo-to-zoo transfers"), and transfers of those NHPs from laboratories that are accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC) (or its equivalent) that have a foreign based and a United States based facility and the NHP is part of an ongoing research project. In such circumstances, CDC would require zoos and laboratories to maintain detailed records regarding NHPs. Because domestic AZA-accredited zoos and established research labs are regulated by USDA's Animal Welfare Act, and if receiving Public Health Service (PHS) funds are bound by the PHS Policy for Humane Care and Use of Laboratory Animals, and may additionally be accredited by AAALAC, to meet strict guidelines regarding husbandry and medical care for animals and occupational health and safety, CDC believes that a records requirement for these zoo collections and research laboratories effectively provides the same health and safety assurance as a 31-day quarantine. Additionally, since zoos are placing imported animals into their existing collections, they require a quarantine facility for all new NHPs. The records requirement will document the health of the NHPs over a specified period of time, in a monitored setting, before the NHPs are transferred between zoo collections or research facilities, thereby providing the same health and safety assurance that quarantine provides for other NHP imports. The transportation of NHPs for a zoo-to-zoo or laboratory-to-laboratory transfer would be in accordance with the transportation guidelines listed in proposed paragraphs (j) and (k). In the event that zoo collections or research laboratories are unable to comply with the requirements regarding proper veterinary medical records, all other aspects of the importation and quarantine requirements will apply.

The proposed rule could increase costs for a small set of importers by

requiring that all live NHP imports enter through ports of entry where CDC quarantine stations are located, except in limited circumstances approved in advance by CDC. This change could increase transportation costs for a small number of shipments currently driven across the Mexican or Canadian borders. Restricting the ports of entry should not increase costs for importers shipping by air, since currently all shipments are to airports with CDC quarantine stations. Further, CDC believes the nominal cost of this requirement is warranted by the health and safety value of ensuring proper loading of the NHPs on a flight, proper handling of the crates as they are unloaded, and adequate disinfection of the plane.

4. Alternatives

The key alternative to the proposed rulemaking would be to not adopt these proposed regulations. If the provisions described above are not adopted, importers of cynomolgus, rhesus, and African green monkeys would continue to bear an additional administrative burden when importing. CDC believes that the reductions in administrative burden and costs proposed through these regulations can be achieved without compromising or reducing the health and safety benefits of current practices. The registration process that all importers must complete, detailed in subsection (g), will include the development of detailed standard operating procedures designed to protect both the NHPs and the individuals at each facility, a signed statement of intent, the review and approval of these SOPs by the Director, and an inspection by CDC. Regular, unscheduled site visits ensure that facility operations are adequately maintained in a manner to prevent the transmission of infectious agents from NHPs to humans.

5. Benefits

In November 1989, a shipment of cynomolgus monkeys imported into the United States was found to be infected with a previously unrecognized Ebola-like filovirus (22). In the 1990 guidelines, registration requirements and permitting procedures were established specifying transit, isolation, and quarantine standards for importers of African green, cynomolgus, and rhesus monkeys. These guidelines were established to reduce the risks to public health that could result from the importation of monkeys carrying a filovirus. The 1990 CDC actions also provided the related benefit of avoiding an economic disruption of the NHP import market associated with the threat of an Ebola-like filovirus.

Although we propose few changes to the existing baseline, this rule would provide some further assurance of health and safety by requiring that most imports of live NHPs arrive at a port of entry with a CDC quarantine station, where qualified personnel are present to monitor the arriving shipments.

By removing the regulatory cost barrier of the quarantine requirement for zoos accredited by AZA and laboratories accredited by AAALAC or licensed by USDA, the proposed rule is expected to yield an additional public benefit by facilitating transfers from zoo-to-zoo and laboratories-to-laboratories. The proposed rule would remove obstacles to the movement of highly endangered NHPs for preservation of a species. Additionally, it would allow the controlled entry of long-term research NHPs for public health studies that could only be performed in a U.S.-based laboratory.

6. Costs

It is difficult to calculate the regulatory costs of our 1990 actions because the threat of an Ebola-like filovirus in the United States may have sharply reduced the future importation of NHPs. Assuming no complications, CDC estimates that the cost for keeping an NHP in quarantine for 31 days is roughly $500–$600 per NHP, which includes the cost of recordkeeping, monitoring and testing NHPs for TB. These costs are in addition to registration and permitting costs per importer. However, absent CDC action, the economic disruption associated with the threat of an Ebola-like filovirus could have resulted in higher industry costs. From FY 2000 through FY 2007, NHP imports increased from 15,433 NHPs to 26,714 NHPs, indicating that CDC's transit, isolation, and quarantine standards for NHP imports have provided for an orderly, growing market while protecting public health.

As noted above, the proposed rule would have three cost impacts relative to the baseline of current practices: (1) An administrative cost reduction for importers of cynomolgus, rhesus, and African green monkeys resulting from a 2-year registration renewal cycle rather than the current 180-day registration renewal cycle; (2) a reduction in quarantine costs for zoos and laboratories that are able to maintain detailed records of zoo-to-zoo and laboratory-to-laboratory transfers; and (3) an increase in transportation costs for NHP shipments customarily driven across borders that will have to enter through ports of entry with CDC quarantine facilities or obtain advance approval and enter the U.S. by an alternate port of entry.

Based on recent estimates from the American College of Laboratory Animal Veterinarians and the Bureau of Labor Statistics, CDC estimates that the average wage for NHP importers is $112.00 per hour. Thus, the estimated cost of registration renewal is $56.00 (30 minutes at $112.00 per hour). In late 2005, eight active commercial importers were subject to the 180-day renewal cycle for cynomolgus, rhesus, and African green monkey importers. The change to a 2-year renewal cycle will reduce annual regulatory costs for each of these importers by $84.00 per year ($56.00 per renewal times 3 fewer renewals every two years), reducing total costs for these eight importers by $672.00 per year ($84.00 × 8). Other registered importers (*e.g.,* zoos) import very infrequently and will continue to renew their registration once every two years, resulting in no net change in costs.

By eliminating quarantine requirements for zoo-to-zoo and laboratory-to-laboratory NHP transfers for zoos and labs that maintain detailed records of such transfers, we expect to reduce annual regulatory costs by about $550 to $1800 per transfer. CDC estimates that only one or two zoo-to-zoo or laboratory-to-laboratory transfers occur each year under current requirements, so eliminating the quarantine requirement for these transfers would yield no substantial regulatory cost reduction.

Requiring importers to send all live NHPs through ports of entry with CDC quarantine stations could increase transportation costs for any NHP shipment that might be driven across the Mexican or Canadian borders. However, we estimate that only three or four such overland shipments occur per year (or about 2% of all shipments), and alternate ports of entry may be allowed if approved in advance by CDC. CDC expects the total cost to be insignificant because of the small number of imports affected.

7. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities if that rule may have a significant economic impact on a substantial number of small entities.

Objective of the Rule. The implementation of the proposed rule would preserve the health benefits of current practices and standards, while yielding net regulatory cost reductions for the NHP importers.

Small Entity Impacts. A regulatory flexibility analysis (RFA) is required to estimate the number of small entities to which a proposed rule would apply, unless a screening analysis shows that the rule will not have a significant economic impact on a substantial number of small entities. A screening analysis is adequate for this proposed rule because it will yield administrative cost reductions for most NHP importers, because the 2-year registration renewal cycle will replace the 180-day registration renewal cycle, and because this proposed rule will eliminate quarantine costs for zoo-to-zoo and laboratory-to-laboratory NHP transfers that maintain detailed records. The only change from current practices that could increase costs is an increase in transportation costs for the small number of shipments currently driven across the Mexican or Canadian borders. If approved in advance by CDC, these imports may be allowed to enter through alternate ports of entry. Thus, CDC expects this change to affect a very small number of NHP importers of any size (a few shipments per year). CDC estimates that there are at most only three or four such overland shipments per year. CDC does not expect the increase in cost for these imports to represent a significant portion of any NHP importer's total sales. Any additional costs are likely to be low, in part because there are several CDC quarantine stations near the Canadian border (Boston, Chicago, Detroit, Minneapolis, New York, and Seattle) and near the Mexican border (El Paso, Houston, and San Diego). Thus, CDC does not expect the proposed rule either to have a significant impact on any small entity or to have a significant economic impact on a substantial number of small entities.

Analysis of Alternatives. As stated previously, the key alternative of the proposed rule is not to adopt each of the provisions that affect regulatory costs, including the provision that would increase costs by requiring NHP importation through ports of entry with CDC quarantine stations for shipments currently imported overland across the Mexican or Canadian borders. CDC did not accept this alternative because CDC believes that the small additional cost is warranted by the health and safety value of assuring that NHP shipments arrive at a port of entry with a CDC quarantine station.

B. Paperwork Reduction Act Analysis

HHS/CDC has determined that this proposed rule contains data collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3420). HHS/CDC already has approval from OMB for the collection of registration information from importers and record keeping requirements under OMB Control No. 0920–0134: Foreign Quarantine Regulations (expiration date June 30, 2012).

In addition, HHS/CDC currently has approval from OMB under OMB Control No. 0920–0263: Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (expiration date June 30, 2011) to collect data from importers who wish to apply for a special permit to import non-human primates. HHS/CDC plans to submit an extension request to OMB for OMB Control No. 0920–0263 for approval to continue the special permit program until HHS/CDC promulgates its final rule on non-human primates. HHS/CDC requests comment from the public on the proposed data collection and record keeping requirements in the rule.

C. Federalism Impact

Under Executive Order 13132, if the contemplated rule would limit or preempt State authorities, then a Federalism analysis is required. The agency must consult with State and local officials to determine whether the rule would have a substantial direct effect on State or local governments, as well as whether it would either preempt State law or impose a substantial direct cost of compliance.

In accordance with section 361(e) of the PHSA [42 U.S.C. 264(e)], nothing in this proposed rule would supersede any provisions of State or local law except to the extent that such a provision conflicts with this rule. For example, the rule would not prevent a State from taking stronger measures to deal with infected or possibly infected NHPs or to cover additional species. Further, our proposed rule will not supersede State requirements not in conflict with the Federal rule's provisions. However, in accordance with section 361(e) of the PHSA, any State or local law that would permit any activity prohibited under this rule would conflict with this rule and, therefore, would be superseded. The rule would not have a substantial direct effect on State or local governments or impose a substantial direct cost of compliance on them.

D. Environmental Impact

In the absence of an applicable categorical exclusion, the Director, CDC, has determined that provisions amending 42 CFR 71.53 will not have a significant impact on the human environment.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any given year. This proposed rule is not expected to result in any one-year expenditure that would exceed this amount.

F. Executive Order 12988

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

IV. References

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List of Subjects in 42 CFR Part 71

Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public health, Quarantine, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention proposes to amend 42 CFR part 71 as follows:

PART 71—FOREIGN QUARANTINE

1. The authority citation for 42 CFR part 71 continues to read as follows:

Authority: Sec. 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 243), secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

2. Revise § 71.53 to read as follows:

§ 71.53 Requirements for importers of nonhuman primates.

(a) *Purpose.* The purpose of this section is to prevent the transmission of communicable disease, including pathogens, from nonhuman primates (NHPs) imported into the United States, or their offspring, to humans. These regulations are in addition to other regulations promulgated by the Secretary to prevent the introduction, transmission, and spread of communicable diseases under 42 CFR part 71, subpart A and 42 CFR part 70.

(b) *Scope.* This section applies to any person importing a live NHP into the United States, including existing importers, any person applying to become a registered importer, and any person importing NHP products.

(1) Importers must make their facilities, vehicles, equipment, and business records used in the importation of NHPs available to CDC for inspection during operating business days and hours, and at other necessary and reasonable times, to enable CDC to ascertain compliance with these regulations.

(2) Nothing in this section supersedes or preempts enforcement of emergency response requirements imposed by statutes or other regulations.

(c) *Acronyms, Initialisms, and Definitions.* (1) For the purposes of this section:

AAALAC means the Association for Assessment and Accreditation of Laboratory Animal Care International.

AZA means the Association of Zoos and Aquariums.

CDC means the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, or an authorized representative acting on its behalf.

CITES means the Convention on International Trade in Endangered Species.

ELISA means enzyme-linked immunosorbent assay, a type of laboratory test that measures antibodies or detects antigens for specific pathogens.

MOT means mammalian old tuberculin, a biological product used as a diagnostic tool in the evaluation for mycobacterial (tuberculosis and related bacteria) infections.

NIOSH means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

PPE means personal protective equipment, such as gloves, respirators, and other devices used in preventing the spread of communicable diseases.

SOPs means standard operating procedures. (2) For purposes of this section, the terms listed below shall have the following meanings:

Animal act means any use of NHPs for entertainment in which the NHPs are trained to perform some behavior or action and are part of a show, performance, or exhibition. Offspring of such NHPs are subject to the requirements of this section.

Breeding colony means a facility where NHPs are maintained for reproductive purposes. Offspring of such NHPs are subject to the requirements of this section.

Broker means a person within the United States that acts as an official agent of, or intermediary between, an exporter and an importer of NHPs.

Cohort means a group of NHPs imported together into the United States.

Director means the Director of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, or an authorized representative.

Educational purpose means the use of NHPs in the teaching of a defined educational program at the university level or equivalent. Offspring of such NHPs are subject to the requirements of this section.

Exhibition purposes means the use of NHPs as part of a public display open to the general public during routinely scheduled hours in a facility that meets or exceeds AZA accreditation standards. Offspring of such NHPs are subject to the requirements of this section.

Importer means any person importing, or attempting to import, a live NHP into the United States, including an applicant to become a registered importer. Within the meaning of this section, *importer* includes any person maintaining a facility or institution housing NHPs during quarantine. Within the meaning of this section, *importer* also includes the agent of any animal act, laboratory, or zoo that is subject to or carries out responsibilities in accordance with these regulations.

In transit means NHPs located within the United States that are not intended for import, whether scheduled or not as part of the movement of those NHPs between a foreign country of departure and foreign country of final destination.

Lab or laboratory means a facility accredited by AAALAC or licensed by USDA, conducting research using NHPs, having foreign and/or United States based facilities, and intending to transfer or transferring one or more NHPs that were originally part of an institutionally approved, ongoing protocol, into the United States facility for purposes related to that specific research project.

Medical consultant means an occupational health physician, physician's assistant, or registered nurse, who is knowledgeable about the risks to human health associated with NHPs.

Nonhuman primate or NHP means all nonhuman members of the Order Primates, including animals commonly known as chimpanzees, gorillas, monkeys, macaques, gibbons, orangutans, baboons, marmosets, tamarins, lemurs, and lorises.

Offspring means the direct offspring of any live NHPs imported into the United States and the descendants of any such offspring.

Old World Nonhuman Primate means all nonhuman primates endemic to Asia or Africa.

Pathogen means any organism or substance capable of causing a communicable disease, including herpes B virus.

Permitted Purpose means the use of NHPs for scientific, education, or exhibition purposes as defined in this section.

Person means any individual or partnership, firm, company, corporation, association, organization, or similar legal entity.

Quarantine means the practice of isolating live NHPs for at least 31 days after arrival in a U.S. quarantine facility where the NHPs are observed for evidence of infection with communicable disease, and where measures are in place to prevent transmission of infection to humans or NHPs, including other NHPs within the cohort.

Quarantine facility means a facility used by a registered importer of NHPs for the purpose of quarantining imported NHPs.

Quarantine room means a room in a registered import facility for housing imported NHPs during the quarantine period.

Scientific purposes means the use of NHPs for research following a defined protocol and other standards for research projects as normally conducted at the university level. Offspring of such NHPs are subject to the requirements of this section.

Trophy means a mount, rug, or other display item composed of the hide, hair, skull, teeth, bones, or claws of a nonhuman primate.

Zoo means:

(A) Within the United States, an AZA accredited and professionally maintained park, garden, or other place in which animals are kept for public exhibition and viewing; or

(B) Outside of the United States, a professionally maintained park, garden, or other place in which animals are kept for public exhibition and viewing that meets or exceeds the accrediting standards of the AZA.

Zoonotic Disease means any infectious agent or communicable disease that is capable of being transmitted from other animals to humans or from humans to animals.

(d) *General Prohibition of Excluded Nonhuman Primates.* (1) A person may not import live NHPs into the United States unless the person is registered with CDC as a NHP importer in accordance with this section. (2) A person may not import live NHPs into the United States or maintain, sell, resell, or otherwise distribute imported NHPs except for:

(i) Permitted purposes; or

(ii) Use in breeding colonies, provided that all offspring will be used only as replacement breeding stock or for permitted purposes.

(3) A person may not import live NHPs into the United States or maintain, sell, resell, or otherwise distribute imported NHPs or their offspring for use as pets, as a hobby, or as an avocation with occasional display to the general public.

(e) *Disposal of Prohibited or Excluded NHPs.* (1) CDC may seize, examine, isolate, quarantine, export, treat, or destroy any NHP if:

(i) It is imported through a location other than an authorized port of entry;

(ii) It is imported for purposes other than permitted purposes;

(iii) It is maintained, sold, resold, or distributed for purposes other than permitted purpose;

(iv) It is imported by a person who is not a registered importer; or

(v) It is otherwise deemed to constitute a public health threat by the Director.

(2) For any NHP arriving in the United States through an unauthorized location, for other than the permitted purposes, or by a person who is not a registered importer, the person attempting to import that NHP, must, at the person's own expense, do one of the following:

(i) Export or arrange for destruction of the NHP, or

(ii) Donate the NHP to a scientific, educational, or exhibition facility as approved by the Director.

(3) If the importer fails to dispose of the NHP by one of the options described in paragraph (e)(2) of this section, the Director will dispose of the NHP at the importer's expense.

(4) Pending disposal of any NHPs arriving into the United States, the NHP will be detained at the importer's expense at a location approved by the Director.

(f) *Authorized ports of entry for live NHPs.* (1) An importer may import live NHPs into the United States only through a port of entry where a CDC quarantine station is located. Currently, the list of CDC quarantine stations can be found at *http://www.cdc.gov/quarantine/QuarantineStations.html.*

(2) In the event that the importer is unable to provide for entry at a port where a CDC quarantine station is located, the importer may only import live NHPs into the United States if advance written approval has been obtained from the Director.

(3) If prior written approval is not obtained from the Director, the importer and excluded NHPs will be subject to the provisions of paragraph (e) of this section.

(g) *Registration of Importers.* Before importing any live NHP into the United States, including those that are part of an animal act or those involved in zoo-to-zoo or laboratory-to-laboratory transfers, an importer must register with and receive written approval from the Director.

(1) To register as an importer, a person must submit the following documents to CDC:

(i) A completed application form;

(ii) A completed statement of intent describing the number and types of NHPs intended for import during the registration period;

(iii) A copy of all written Standard Operating Procedures (SOPs) that include all elements required in paragraphs (h) through (n) of this section;

(iv) A copy of any current registrations, licenses, and/or permits that may be required from the U.S. Department of Agriculture and U.S. Fish and Wildlife Service;

(v) A signed, self-certification stating that the importer is in compliance with the regulations contained in this section and agrees to continue to comply with these regulations.

(2) Upon receiving the documentation required by this section, the Director will review the application and either grant, in whole or in part, or deny the application for registration as an importer. CDC may consult with the importer regarding any element of the application or accompanying documentation.

(i) Before issuing a registration, the Director may inspect any business record, facility, vehicle, or equipment to be used in importing NHPs.

(ii) Unless revoked in accordance with paragraph (t) of this section, a registration certificate issued under this section is effective for two years beginning from the date CDC issues the registration certificate.

(iii) An importer must apply to CDC for renewal of the registration certificate not less than 30 days and not more than 60 days before the existing registration expires.

(3) All importers must comply with the requirements of paragraphs (h) through (n) of this section.

(h) *Documentation.* An importer must have a written policy that imported NHPs and their offspring will only be used and distributed for permitted purposes.

(1) An importer must document the intended purpose for each imported NHP and the purpose must comply with one of the permitted purposes.

(2) An importer must retain records documenting the identity of any recipients, the number of NHPs in each shipment or sale, and the dates of each shipment or sale.

(3) An importer must maintain these records in an organized manner and either electronically or in a central location that is at or in close proximity to the NHP facility to allow CDC to inspect the records during CDC site visits during regular business hours or within one hour of such visits.

(4) Before distributing or transferring an imported NHP, an importer must:

(i) Communicate to the recipients of NHPs, in writing, the restrictions and definitions of permitted purposes; and

(ii) Obtain written certifications from the intended recipient that the NHPs will be used and distributed for one of the permitted purposes.

(5) An importer must keep written certifications demonstrating that the NHPs and any offspring will continue to be used for permitted purposes.

(i) *Worker Protection Plan and Personal Protective Equipment.* (1) In addition to complying with the requirements of this section, an importer must comply with all relevant Federal and State requirements relating to occupational health and safety.

(2) Importers must have a written worker protection plan for anyone whose duties may result in exposure to NHPs. An importer must adhere to the plan and SOPs and must ensure that each worker covered under the plan also adheres to it and SOPs.

(3) An importer must contact CDC immediately by telephone to report any instance of a worker exposed to a zoonotic illness and must include instructions for contacting CDC in its worker protection plan.

(4) A worker protection plan must include the following:

(i) Procedures to protect and train transport workers in how to avoid and respond to zoonotic disease exposures associated with NHPs;

(ii) Hazard evaluation and worker communication procedures that adhere to those in paragraph (i)(4) of this section;

(iii) Personal protective equipment (PPE) requirements that adhere to those in paragraph (i)(5) of this section;

(iv) SOPs that adhere to tuberculosis requirements in paragraph (i)(6) of this section;

(v) If applicable, SOPs that adhere to requirements relating to macaques as described in paragraph (i)(7) of this section;

(vi) An infection-prevention program, including infection-prevention methods requiring, at a minimum, PPE and workplace practices for preventing infection among workers whose duties may result in exposure to NHPs;

(vii) SOPs that include requirements for preventing workplace infection from potentially contaminated needles or other sharp instruments and that, at a minimum, prohibit workers from recapping used needles by hand; removing needles by hand; or otherwise bending, breaking, or manipulating used needles by hand;

(viii) SOPs requiring that used disposable syringes and needles, scalpel blades, and other sharp items be placed in puncture-resistant containers kept as close to the work site as practical;

(ix) SOPs requiring that removable, disposable PPE be autoclaved, incinerated, or otherwise disposed of as biohazardous waste. Nondisposable clothing worn in the quarantine facility must be disinfected on site before laundering;

(x) An infection prevention program that requires NHP handlers to cleanse all bites, scratches, and/or mucosal surfaces or abraded skin exposed to blood or body fluids immediately and thoroughly;

(xi) Infection prevention procedures that require workers to immediately flush their eyes with water for at least 15 minutes following an exposure of blood or body fluids to the eye;

(xii) Post-exposure procedures that provide potentially exposed workers with direct and rapid access to a medical consultant including:

(A) Procedures ensuring that exposed workers have direct and immediate access to a medical consultant who has been previously identified in the SOPs to CDC.

(B) For potential exposures to B virus, post-exposure procedures that require the routing of diagnostic specimens to the National B Virus Resource Center located at Georgia State University in Atlanta, Georgia, or another location as specified by CDC.

(xiii) Procedures for documenting the frequency of worker training, including for those working in the quarantine facility.

(5) As part of the worker protection plan described in this subparagraph, an importer must establish, implement, and maintain hazard evaluation and worker communication procedures that include the following:

(i) A description of the known zoonotic disease and injury hazards of handling NHPs;

(ii) The need for PPE in handling NHPs and training in proper use of PPE, including re-training and reinforcement of appropriate use;

(iii) Procedures for monitoring workers for signs of zoonotic illness, including procedures that ensure reporting to CDC by telephone within 24 hours of the occurrence of illness in any worker suspected of having a zoonotic disease acquired from an NHP; and

(iv) Procedures for disinfection of garments, supplies, equipment, and waste.

(6) As part of the worker protection plan described in this paragraph, an importer must identify the PPE required for each task or working area. Additionally, in this part of the worker protection plan, an importer must ensure the following:

(i) Any required PPE must be available to workers when needed;

(ii) Workers in direct contact with NHPs must wear the following:

(A) Gloves of sufficient thickness to reduce the risk of cuts, scratches, and punctures;

(B) Disposable NIOSH-approved N95 or equivalent respirators, in compliance with OSHA 29 CFR § 1910.134 which requires respiratory protection program;

(C) Face shields or eye protection; and

(D) Outer protective clothing when opening crates, removing foreign materials from crates, feeding NHPs, removing dead NHPs, or handling bedding materials.

(iii) Workers handling crates or pallets containing NHPs must wear the following:

(A) Elbow-length, reinforced leather gloves or equivalent gloves that prevent penetration of splinters, other crating materials, or debris;

(B) Long-sleeved shirts and trousers that resist minor tears and are appropriate for the weather;

(C) Waterproof shoes or boots;

(D) NIOSH-approved respiratory protection that is compliant with OSHA 29 CFR § 1910.134, and

(E) Face shields or eye protection that protect the eyes.

(iv) Workers whose faces may come within 5 feet of an NHP must wear disposable NIOSH-approved N95 or equivalent respirators and either face shields or eye protection to protect against aerosol or droplet transmission of pathogens;

(v) Workers must remove disposable PPE and discard as a biohazard; and

(vi) Workers must not drink, eat, or smoke while physically handling NHPs or cages, crates, or other materials from such NHPs.

(7) For tuberculosis protection, an importer must ensure the following:

(i) Workers in a facility housing NHPs must have a baseline tuberculosis skin test prior to working with NHPs and, at least annually, a tuberculosis skin test;

(ii) Prompt and direct access to a medical consultant who reads tuberculin skin tests and maintains records for such tests;

(iii) If an NHP is found to have laboratory-confirmed tuberculosis, any worker who had previously entered any room where a confirmed NHP has been housed must promptly undergo a post-exposure tuberculin skin test and

(A) If that test is negative, the worker must undergo another tuberculin skin test 3 months after exposure, and

(B) If that test is reactive, the worker must be referred for medical evaluation; and

(C) The CDC must be immediately notified of the results by telephone, SMS text, or e-mail as specified in the importer's standard operating procedures.

(iv) Compliance with exposure control planning elements under 29 CFR 1910.1030 for workers who will have parenteral and other contact with blood or other potentially infectious material from NHPs and compliance with the respiratory protection requirements in 29 CFR 1910.134.

(8) An importer must develop, implement, and adhere to a written PPE program to prevent herpes B virus transmission. The program must be based on a thorough hazard assessment of all work procedures, potential routes of exposure (*e.g.,* bites, scratches, or mucosal exposures), and potential adverse health outcomes.

(9) An importer must keep records of all serious febrile illnesses [fever greater than 101.3 degrees Fahrenheit (38.5 degrees Celsius) for more than 48 hours] in workers having exposure to NHPs in transit or in quarantine. The record must be kept by the importer as part of the worker's administrative records. The importer must promptly notify CDC by telephone if such an illness occurs. An importer must ensure that the medical consultant providing care is informed that the patient works with and/or has been exposed to NHPs.

(j) SOP Requirements and Equipment Standards for Crating, Caging, and Transporting Live Nonhuman Primates. Equipment standards for crating, caging, and transporting live NHPs must be in accordance with USDA Animal Welfare regulation standards (9 CFR parts 1, 2, and 3), and an importer must establish, implement, maintain, and adhere to SOPs that ensure the following requirements are met:

(1) Any crate used to transport NHPs must be free of sharp projections that could scratch or otherwise injure workers.

(2) Glass items must not be used for feeding or watering NHPs during transport.

(3) NHPs must only be removed from crates in an approved quarantine facility under the supervision of a licensed, qualified veterinarian. NHPs must not be removed during transport.

(4) Whenever possible, workers must not handle live NHPs directly.

(5) Upon arrival into the U.S., only an importer or an authorized representative may receive the NHPs from a conveyance (*i.e.,* airplane, ship, *etc*).

(6) All reusable items must be decontaminated between uses.

(7) At all times during transport, crates containing NHPs must be separated by a physical barrier from workers, other individuals, and all other animals and cargo, or by a spatial barrier greater than 5 feet, that prevents contamination of cargo or individuals with bodily fluids, feces, or soiled bedding.

(8) At all times during transport, ventilation systems must direct airflow away from individuals and toward the compartment housing NHPs to prevent the transmission of zoonotic diseases to individuals traveling with the shipment; any recirculated air must be HEPA-filtered.

(9) If traveling by plane, crates containing NHPs must be loaded in the cargo hold last and removed first, must be placed on plastic that prevents spillage onto the deck of the plane, and must be placed on pallets or double crated to ensure separation from other cargo.

(10) Workers, as well as NHPs, must be protected from communicable disease exposures at any facility used en route, including transportation holding facilities. An importer must maintain a description of any transportation holding facilities and document the communicable disease prevention measures taken to protect workers at facilities used en route.

(11) Documentation must be made of the communicable disease-prevention procedures carried out in every step of the chain of custody, from the time of embarkation of the NHPs at the country of origin until arrival at the quarantine facility.

(12) Procedures to ensure that aircraft, ship, vehicles, and related equipment are decontaminated following transport.

(13) PPE, bedding, or other biohazardous waste must be disposed of following transport.

(k) *Ground Transport Vehicles.* An importer must establish, implement, maintain, and adhere to SOPs for ground transport vehicles transporting NHPs that meet the following requirements.

(1) Ground transport vehicles must have a separate cargo compartment with separate heating, ventilation, and air-conditioning systems.

(2) The interior surfaces of ground transport vehicle cargo compartments must be of smooth construction, easily cleaned and disinfected.

(3) PPE, bedding, or other biohazardous waste must be disposed of following ground transport.

(4) Ground transport vehicle cargo compartments must be large enough to allow safe stowage of NHP crates in a manner that allows ready access to each NHP during transit without unloading any crates.

(5) After transport of the NHP shipment from the port of entry to the quarantine facility, the importer must notify CDC in writing within 48 hours of the time the shipment arrived at the quarantine facility.

(6) As part of the notification of arrival in paragraph (k)(4) of this section, an importer must inform CDC whether suspected or confirmed transmission or spread of communicable disease occurred during transport, including notification of NHPs that died or became ill during transport or malfunctions associated with disease mitigation procedures or equipment.

(l) *Quarantine Facilities.* (1) The requirements of this paragraph relating to quarantine facilities does not apply to laboratory-to-laboratory transfers or zoo-to-zoo transfers that are in compliance with paragraphs (p)(2) and (q)(2) of this section, respectively.

(2) An importer must maintain a quarantine facility for holding a cohort during the required quarantine period. NHPs must be quarantined for 31 days after arrival at the importer's quarantine facility. CDC may extend the quarantine period if an importer or CDC finds or suspects that an NHP is infected with, or has been exposed to, a zoonotic disease, or if an importer or CDC finds a need for additional diagnostic testing.

(i) For any quarantine facility established or maintained under this section, an importer must establish, implement, maintain, and adhere to SOPs that meet the following physical security requirements:

(A) The facility must be locked and secure, with access limited to authorized, trained, and knowledgeable personnel.

(B) An importer must limit access to NHP quarantine areas to authorized personnel who are responsible for the transport, study, care, or treatment of the NHPs.

(ii) An importer must keep the number of workers involved in the care, transport, and inspection of NHPs to the minimum necessary to perform these functions.

(iii) The facility must be designed and operated in such a manner as to allow for adequate disinfecting.

(iv) The facility must have adequate equipment and space for discarding and disinfecting all equipment, clothing, and caging.

(v) Each quarantine room must have a separate air-handling system and remain under negative air pressure in relationship to the common hallway or anteroom(s) adjacent to the quarantine room.

(vi) Each quarantine room must have air flow indicators that are affixed outside the quarantine room that indicate the direction of airflow into or out of quarantine rooms and adjoining common hallways and anterooms.

(3) An importer must establish, implement, maintain, and adhere to SOPs for handling, monitoring, and testing NHPs in quarantine that meet the following requirements:

(i) An importer must ensure that all NHPs are identified individually with a unique number or alphanumeric code permanently applied to the NHP by tattoo, microchip, or other permanent identifier before importation or after the 31-day quarantine. Tattoos, microchips, or other permanent identifiers must not be applied during the quarantine period because such procedures pose a risk of needle sticks or aerosol exposures to employees.

(ii) Health certificates, shipping documents, and NHP health records must include the number or code required in paragraph (l)(2)(i) of this section, as well as the age, sex, and species of the NHP.

(iii) An importer must ensure NHPs are confined in a squeeze-back cage whenever possible and that any individual NHP is anesthetized or tranquilized before handling.

(iv) For any procedure involving the use of a syringe, a separate, disposable needle and syringe must be used, including a sterile needle and syringe for withdrawing medication from any multidose vials (*e.g.,* ketamine).

(v) Before any contaminated item is removed from a quarantine facility an importer must ensure all NHP waste, bedding, uneaten food, or other possibly contaminated items are disinfected, autoclaved, or double-bagged for disposal as biomedical waste by a licensed facility.

(vi) All cages, feeding bottles, reusable items, and other contaminated items must be disinfected between uses and before disposal.

(vii) Any equipment used for infusion of NHPs must be autoclaved or incinerated, as appropriate.

(viii) During the quarantine period, an importer must monitor NHPs for signs of any zoonotic illness, including signs consistent with yellow fever, monkeypox, or filovirus disease.

(A) If any NHP appears ill during quarantine, an importer must monitor that NHP for signs of zoonotic illness, including filovirus disease, and ensure appropriate treatment.

(B) If an Old World NHP displays signs suggestive of filovirus infection (*e.g.,* diarrhea with melena or frank blood, bleeding from external orifices or petechiae, or suffusive hemorrhage), and survives, an importer must collect serum samples on day 31 of quarantine and test these samples for antibodies to filovirus while the entire cohort remains in quarantine. An importer must test the serum for Immunoglobulin G (IgG) antibodies to Ebola viruses by using an ELISA methodology, or other method approved by CDC.

(C) An importer must not request a release from CDC of any NHP from quarantine under paragraph (l)(3) of this section, if the importer knows or has reason to suspect that the NHP is infected with or has been exposed to a zoonotic disease.

(ix) For each NHP in a quarantine facility, an importer must administer at least three tuberculin skin tests on the eyelid using old mammalian tuberculin (MOT), with at least 2 weeks between tests, before the NHP is released from import quarantine. Tuberculin skin tests must be read and recorded at 24, 48, and 72 hours, and a grading scale for interpretation of these tests must be listed in an SOP for tuberculosis testing.

(A) An importer must ensure that any cohort with positive or suspicious tuberculin reactions remains in quarantine and receives at least five additional tuberculin skin tests (each administered at least two weeks apart) following removal of the last NHP with a positive TST.

(B) The validity of tuberculosis test results may be compromised if during quarantine an NHP contracts a viral illness, including measles; a severe illness; is treated with steroids; or is immunized. An importer must document such occurrence(s) and hold the NHPs until they have recovered from the illness or are no longer on treatment, and for a recommended time after recovery (to be determined in consultation with CDC, depending on the illness or treatment in question) before tuberculosis tests are performed.

(C) An importer must retain records of all tuberculin skin tests performed during the lifetime of each NHP at the facility housing the NHP until the NHP is transferred to another facility. These records must accompany the NHP during moves to other facilities.

(x) An importer must ensure that different cohorts of NHPs are quarantined in separate quarantine rooms.

(A) If mixing of cohorts should occur, an importer must treat the mixed cohort as a single cohort.

(B) All NHPs within that mixed cohort must remain in quarantine until each NHP in that mixed cohort has completed the minimum 31-day quarantine period.

(C) Quarantined NHPs must be housed in such a manner that they at all times will not expose non-quarantined NHPs to non-filtered air and other potentially infectious materials, including soiled bedding, caging, and other potentially contaminated items.

(4) Before releasing an NHP from quarantine, an importer must obtain written permission from CDC. CDC may permit the release of a cohort from quarantine when all the following conditions have been met:

(i) The 31-day quarantine period, including any required extension of quarantine, has been completed.

(ii) CDC has confirmed receipt of written notification of the health status of the NHPs in the shipment from the quarantine facility's licensed veterinarian as required by paragraph (m)(4) of this section.

(iii) CDC confirms that the importer has addressed and resolved to CDC's satisfaction any NHP or worker communicable disease issues that were reported to CDC during shipment.

(5) If CDC notifies an importer of any evidence that NHPs have been exposed to a zoonotic disease, the importer must, at the importer's expense, implement or cooperate in the CDC's implementation of additional measures to rule out the spread of suspected zoonotic disease before releasing a shipment from quarantine, including examination, additional diagnostic procedures, treatment, detention, isolation, seizure, or destruction of exposed animals.

(6) An importer must establish, implement and adhere to SOPs for safe handling and necropsy of any NHP that dies in quarantine. The SOPs must ensure the following:

(i) The carcass of the NHP must be placed in a waterproof double-bag and properly stored for necropsy, specimen collection, autoclaving and/or incineration, and disposal;

(ii) A necropsy must be performed by a State-licensed veterinary pathologist or State-licensed veterinarian under biosafety level 3 containment. Each necropsy report must address all major organ systems and incorporate clinical history and laboratory findings;

(iii) Necropsy and appropriate laboratory testing of the NHP must document the cause of death and/or rule out zoonotic illness;

(iv) Necropsy must be performed under biosafety level 3 or biosafety level 2 to protect against exposure to highly infectious agents;

(v) Any samples of tissues, blood, serum, and/or transudates (bodily fluid) collected during necropsy must be retained until the NHP shipment has been released from quarantine by CDC, in case other testing is required by CDC;

(vi) Fresh and formalin-fixed tissue specimens, including tracheobronchial lymph node, liver, lung, and spleen, regardless of necropsy findings must be collected for laboratory examination;

(vii) Any granulomatous lesions found in any NHP at necropsy, regardless of whether tuberculosis in the NHP was previously suspected, must be submitted to a laboratory for laboratory examination for acid-fast bacilli and for mycobacterial culture; and

(viii) In the event that an Old World NHP dies or is euthanized for any reason other than trauma during quarantine, liver tissue for filovirus antigen by using the antigen-capture ELISA method must be submitted to a laboratory for testing

(m) *Health Reporting Requirements for Nonhuman Primates.*

(1) An importer must notify CDC of the events listed in this paragraph by telephone or as otherwise specified in this paragraph.

(2) An importer must notify CDC within 24 hours of the occurrence of severe illness or death of NHPs in quarantine facilities.

(3) An importer must report to CDC within 24 hours of the occurrence of any illness in NHPs that an importer has reason to suspect is yellow fever, monkey pox, or filovirus disease.

(4) If mortality for a cohort exceeds 5 percent, calculated from time of embarkation from country of origin to release from CDC quarantine, an importer must report the circumstances to CDC promptly, including the cause of death for each NHP.

(5) Upon completion of the quarantine period and before an importer releases any NHP, cohort, or mixed cohort from quarantine, the importer must ensure that the quarantine facility's licensed veterinarian notifies CDC in writing of the health status of the shipment.

(6) An importer must notify CDC within 24 hours if any NHP tests positive for filovirus virus antigen or antibody.

(7) An importer must report to CDC within 48 hours, any positive or suspicious tuberculin skin test results, necropsy findings, or laboratory results. Any report required under this section must include a copy or summary of the individual NHP's health records.

(n) *Recordkeeping and Reporting Requirements for Importing NHPs.*

(1) Before authorizing the import of any NHPs, an importer must be in compliance with all applicable elements of the importer's SOPs.

(2) At least seven days before importing a shipment of NHPs, an importer must notify CDC in writing of the impending shipment and provide the following information:

(i) The importer's name and address;

(ii) Number and species of NHPs being imported;

(iii) Description of crates;

(iv) Means of individually identifying NHPs;

(v) Origin of NHPs, including the country, the exporter, and the exporter's address;

(vi) Use of NHPs as described by the recipient under paragraph (i)(2) of this section;

(vii) Specific itinerary with names, dates, flights, times, airports, sea ports, and responsible parties to contact at every step of travel, including all ground transportation;

(viii) Port of entry;

(ix) If arriving by flight, the name of the airline and its flight number;

(x) If arriving by vehicle, the name of the vehicle's owner and its license plate number;

(xi) If arriving by ship, the name of the ship and its vessel number;

(xii) Name and address of the destination quarantine facility;

(xiii) Name, address, and contact information for shipper, if other than the importer;

(xiv) Name, address, and contact information for broker in the United States;

(xv) Name, address, and contact information for person responsible for off-loading NHPs in the United States;

(xvi) Name, address, and contact information for any party responsible for ground transportation from port of entry to quarantine facility;

(xvii) Expected quarantine facility, if different from the importer;

(xviii) Master air waybill number for shipment;

(xix) CITES permit number and expiration date.

(o) *Animal Acts.* (1) All foreign-based animal acts that include a NHP must be registered with CDC in accordance with this section prior to entry into the U.S. In addition to the requirements in paragraph (g) of this section, an importer must provide:

(i) A description of the animal act that includes the NHP.

(ii) Brochures, advertising materials, and/or documentation of recent or planned animal act performances.

(iii) A current list of all NHPs in the animal act, indicating each NHP's name, species, sex, age, distinguishing physical description, and unique identifier such as a tattoo or microchip.

(iv) A description, diagram, and photographs of the facilities where the importer houses the NHPs in the animal act in the United States, including illustrations of the primate caging and/or enclosures; the relationship of these cages or enclosures to other structures on the property and adjoining properties; whether the primate facilities are open to the air or fully enclosed; and the physical security measures of the facility.

(v) Documentation signed by a licensed veterinarian describing the physical exam performed on each NHP in the animal act. Such examinations must be performed at least once a year. The physical exam must include the following:

(A) Routine complete blood counts, clinical chemistries, fecal exams, and any additional testing indicated by the physical exam.

(B) At least once a year, tuberculosis testing with MOT and interpreted as stated in paragraph (l)(2)(ix);

(C) NHPs with positive tuberculin skin test results must be treated with antituberculosis chemotherapy after consultation with CDC.

(D) If the NHP is a chimpanzee, serology and antigen testing for hepatitis B, serology for hepatitis C, and any additional titers as indicated by clinical history or exam. A chimpanzee found serologically positive for hepatitis B and/or hepatitis C is ineligible for entry or re-entry into the U.S., unless confirmatory evidence signed by a licensed veterinarian shows that there is no hepatitis B or hepatitis C virus present in the NHP.

(vi) SOPs for transporting the NHPs internationally, including the shipping crates or enclosures, the type of conveyance, and measures to minimize human exposure to the NHPs.

(vii) A copy of a negative tuberculosis test conducted within the past 12 months, or medical documentation that the individual is free of clinically active tuberculosis, for each trainer and/or handler.

(viii) A copy of each SOP for dealing with suspected zoonotic diseases.

(ix) If macaques are in the animal act, a procedure for dealing with potential herpes B-virus exposures.

(2) Requirements for U.S.-based animal acts containing NHPs to re-enter the United States after export.

(i) An importer must ensure that the NHP contains the unique identifier, such as a tattoo or microchip, obtained prior to export.

(ii) Each NHP must be included on an approved list of performing NHPs that are cleared by CDC to travel outside of and return to the U.S.

(iii) Before re-entry, an importer must ensure that CDC receives the itinerary as described in paragraph (n)(2).

(p) *Zoo-to-Zoo Transfers.* (1) Persons who will only be importing live NHPs into the United States through transfer from one zoo to another must comply with all the elements listed in paragraphs (g), (h), (i), (j), (k), (m), (n) of this section.

(2) If a zoo is receiving one or more NHPs into the United States from another AZA zoo (or AZA-equivalent outside of the U.S.), the recipient zoo must, before the transfer, submit the following information for approval by CDC:

(i) A copy of each NHP's veterinary medical records regular testing for tuberculosis from the previous zoo for approval by CDC, including a method of positive identification such as a tattoo, microchip or photograph, and

(ii) A copy of a current health certificate, including documentation of a negative tuberculosis test, signed by a licensed qualified veterinarian within 14 days of the transfer documenting that the NHP appears healthy and free from communicable diseases, and

(iii) Documentation which verifies that the recipient zoo is registered in accordance with this section, and

(iv) Specific itinerary with names, dates, flights, times, airports, seaports, and responsible parties to contact at every step of travel, including all ground transportation.

(3) Persons importing live NHPs that are transferred from one zoo to another, who are not able to meet the requirements listed in paragraphs (p)(2)(i) and (ii) of this section must comply with all the elements in paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this section.

(q) *Laboratory-to-Laboratory Transfers.* (1) Persons who will only be transferring NHPs on established research protocols from a laboratory outside of the U.S. to laboratory within the U.S. must comply with all the elements listed in paragraphs (g), (h), (i), (j), (k), (m), and (n) of this section.

(2) If a lab is receiving one or more NHPs for purposes related to an ongoing research project from another established research facility outside the United States, the recipient facility must, before the transfer, submit the following to CDC for approval:

(i) A copy of each NHP's veterinary medical records, including regular testing for tuberculosis from the previous lab for CDC's approval. The medical record should include a positive identification of the NHP, such as a tattoo, microchip, or photograph.

(ii) A copy of a current health certificate stating that the NHP(s) appear healthy and are free from communicable diseases, including documentation of a negative tuberculosis test. The certificate must be signed by a State licensed veterinarian within 14 days of the transfer; and

(iii) Documentation of the ongoing research project and the reason the NHP needs to be transported to the U.S. laboratory facility.

(iv) Specific itinerary with names, dates, flights, times, airports, sea ports, and responsible parties to contact at every step of travel, including all ground transportation.

(3) Persons importing live NHPs that are transferred from one lab to another, who are not able to meet the requirements listed in paragraph (q)(2)(i),(ii), and (iii) of this section must comply with all the elements in paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this section.

(r) *In Transit Shipments of NHPs.* (1) Before arrival into the United States, brokers of in transit shipments must notify CDC of all scheduled in transit shipments of NHPs not intended for import into the United States and provide the following information:

(i) Number and species of NHPs in the shipment;

(ii) Origin of NHPs, including the country, the exporter, and the exporter's address;

(iii) Name and full address of the final destination quarantine facility in the importing country;

(iv) Means of individually identifying NHPs, if required by the importing country;

(v) Specific itinerary while in the United States including names, dates, flights, times, airports, seaports, and responsible parties to contact at every step of travel within the United States, including all ground transportation;

(vi) Description of crates;

(vii) Established SOPs to protect and train transport workers from exposure to communicable disease while handling NHPs;

(viii) SOPs describing procedures to prevent contamination of other articles and cargo during transit, including physical separation of crates from other cargo;

(ix) SOPs describing procedures to decontaminate aircraft, ships, vehicles, and related equipment following transport; and

(x) Proposed use, if any, of in transit holding facilities and steps to be taken to protect workers, as well as NHPs, from communicable disease exposure at each facility to be used en route.

(2) While located in the United States, in transit shipments must be housed and cared for in a manner consistent with requirements for NHPs intended for import into the United States as specified in paragraphs (j) and (k) of this section.

(s) *Revocation and Reinstatement of an Importer's Registration.* (1) If the Director determines that an importer has failed to comply with any applicable provisions of this section, including the importer's SOPs, the Director may revoke the importer's registration.

(2) CDC will send the importer a notice of revocation stating the grounds upon which the proposed revocation is based.

(i) If the importer wishes to contest the revocation, the importer must file a written response to the notice within 20 calendar days after receiving the notice.

(A) As part of the response, an importer may request that the Director review the written record.

(B) If an importer fails to file a response within 20 calendar days, all of the grounds listed in the proposed revocation will be deemed admitted, in which case the notice shall constitute final agency action.

(3) If an importer's response is timely, the Director will review the registration, the notice of revocation, and the response, and make a decision in writing based on the written record.

(4) As soon as practicable after completing the written record review, the Director will issue a decision in writing that shall constitute final agency action. The Director will serve the importer with a copy of the written decision.

(5) The Director may reinstate a revoked registration after inspecting the importer's facility, examining its records, conferring with the importer, and receiving information and assurance from the importer of compliance with the requirements of this section.

(t) *Nonhuman primate products.* (1) NHP trophies, skins, or skulls may be imported without obtaining a permit under this section if accompanied by documentation demonstrating that the products have been rendered noninfectious using one of the following methods:

(i) Boiling in water for an appropriate time so as to ensure that any matter other than bone, horns, hooves, claws, antlers, or teeth is removed; or

(ii) Gamma irradiation at a dose of at least 20 kilo Gray at room temperature (20° C or higher); or

(iii) Soaking, with agitation, in a 4% (w/v) solution of washing soda (sodium carbonate, Na2CO3) maintained at pH 11.5 or above for at least 48 hours; or

(iv) Soaking, with agitation, in a formic acid solution (100 kg salt [NaCl] and 12 kg formic acid per 1,000 liters water) maintained at below pH 3.0 for at least 48 hours; wetting and dressing agents may be added;

(v) In the case of raw hides, salting for at least 28 days with sea salt containing 2% washing soda (sodium carbonate, Na2CO3).

(2) Non-live NHP products (including skulls, skins, bodies, blood, or tissue) that have not been rendered noninfectious are considered to pose a potential human health risk and may only be imported under the following circumstances:

(i) The product must be accompanied by a permit issued by the Director. Requests for permits should be accompanied by an explanation of the product's intended use and a description of how the product will be handled to ensure that it does not pose a zoonotic disease threat to humans. The Director will review the request for a permit, and accompanying materials, and issue a decision that shall constitute final agency action.

(ii) The product may only be imported for bona fide scientific purposes.

(iii) The product may only be received by a facility equipped to handle potentially infectious NHP materials.

(iv) The product must comply with any other applicable Federal requirements, including those relating to packaging, shipping, and transport of potentially infectious, biohazardous substances as well as those for Select Agents pursuant to 42 CFR part 73.

(u) *Appeal of denial for a permit to import. (1)* If the CDC denies your request for a permit under 42 CFR 71.53, you may appeal that denial to the CDC Director.

(2) You must submit your appeal in writing to the CDC Director, stating the reasons for the appeal and showing that there is a genuine and substantial issue of fact in dispute.

(3) You must submit the appeal within 2 business days after you receive the denial.

(4) CDC will issue a written response to the appeal, which shall constitute final Agency action.

Dated: December 15, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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To designate the airport traffic control tower located at Spokane International Airport in Spokane, Washington, as the ''Ray Daves Airport Traffic Control Tower''. (Dec. 22, 2010; 124 Stat. 3556)

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Longfellow House-Washington's Headquarters National Historic Site Designation Act (Dec. 22, 2010; 124 Stat. 3581)

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To amend the Act of August 9, 1955, to authorize the Coquille Indian Tribe, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, the Klamath Tribes, and the Burns Paiute Tribe to obtain 99-year lease authority for trust land. (Dec. 22, 2010; 124 Stat. 3582)

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