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WHEN: Tuesday, January 25, 2011
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA46

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Final rule with request for public comments.

SUMMARY: This final rule amends the Natural Resources Conservation Service (NRCS) regulations for implementation of the Farm and Ranch Lands Protection Program (FRPP). This action is necessary to address the comments received on the interim final rule as published and to publish changes to the entity certification requirements. This document provides a 30 day public comment period on the entity certification requirements.

DATES: *Effective Date:* The rule is effective January 24, 2011.

Comment Date: Submit comments on § 1491.4(d) through (f) on or before February 23, 2011.

ADDRESSES: Address all comments regarding § 1491.4(d) through (f) using any of the following methods:

Mail: Mark Rose, Farm and Ranch Lands Protection Program Manager, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013; *Fax:* (202) 720–9689; *e-mail: mark.rose@wdc.usda.gov*.

Hand delivery: Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please ask the guard at the entrance to the South Building to call (202) 720–1854 in order to be escorted into the building.

FOR FURTHER INFORMATION CONTACT: Mark Rose, Program Manager, Farm and Ranch Lands Protection Program, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250; Telephone: (202) 720–9476; Fax: (202) 720–9689; or E-mail: *mark.rose@wdc.usda.gov.*

Persons with disabilities who require alternative means for communicating (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866, this final rule with request for comment has been determined to be a significant regulatory action. The administrative record is available for public inspection at the Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC. In accordance with Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications of the preamble, and a copy of the analysis is available upon request from Mark Rose, Program Manager, Farm and Ranch Lands Protection Program, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

In compliance with the National Environmental Policy Act, a Programmatic Environmental Assessment (EA) was prepared in association with the interim final rule. The analysis determined there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement was not required to be prepared (40 CFR 1508.13). For this final rule, the agency has determined that there are no new circumstances or significant new information that has a bearing on environmental effects which warrant supplementing the previous EA and Finding of No Significant Impact (FONSI). The proposed changes identified in this final rule are considered minor changes that should be implemented for the program. The majority of these changes are administrative or technical changes to the regulation.

Copies of the EA and FONSI may be obtained from Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6151 South Building, Washington, DC 20250. The EA and FONSI are also available at *http://www.nrcs.usda.gov/programs/Env_Assess/.*

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that this final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The historical participation data presented in the analysis indicates that producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. By extrapolating from historical participation data, NRCS has reasonably concluded that NRCS programs, including FRPP, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure that all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in the Department of Agriculture (USDA) programs. FRPP applies to all

persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this final rule will not result in adverse civil rights implications for women, minorities, and persons with disabilities.

Copies of the Civil Rights Impact Analysis are available from Mark Rose, Program Manager, Farm and Ranch Lands Protection Program, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250, or electronically at *http://www.nrcs.usda.gov/programs/FRPP.*

Paperwork Reduction Act

Section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Act) requires that the implementation of programs authorized under Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (Title 44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which requires government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this final rule on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more in any one year (adjusted by inflation) by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Executive Order 13132

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this final rule does not have Federalism implications.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule on Indian Tribal governments and concluded that this final rule will not negatively affect Indian Tribal governments or their communities. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. However, NRCS plans to undertake a series of at least six regional Tribal consultation sessions before January 15, 2011, on the impact of NRCS conservation programs and services on Tribal governments and their members to establish a baseline of consultation for future actions. Reports from these sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. NRCS will respond in a timely and meaningful manner to all Tribal governments' requests for consultation.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of Title 5, U.S.C., which allows an agency to forgo the Small Business Regulatory Enforcement Fairness Act of 1996 usual 60-day congressional review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs authorized or amended by Title II of the 2008 Act in effect as soon as possible. Accordingly, this rule is effective January 24, 2011.

Section 2708 of the 2008 Act

Section 2708, Compliance and Performance, added a paragraph to section 1244(g) of the Food Security Act of 1985 (1985 Act) entitled, Administrative Requirements for Conservation Programs, which states the following:

"(g) Compliance and performance.—For each conservation program under Subtitle D, the Secretary will develop procedures—

(1) To monitor compliance with program requirements;

(2) To measure program performance;

(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

(4) To track participation by crop and livestock type; and

(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004)."

This new provision presents in one place the accountability requirements placed on the agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve Program, the Conservation Security Program, the Conservation Stewardship Program, the FRPP, the Grassland Reserve Program, the Environmental Quality Incentives Program (EQIP) (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the 1985 Act and the agency's accountability responsibilities regarding program performance. The existing procedures described below relate to meeting the requirements of section 1244(g) of the 1985 Act and agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program

participants and that relate to the agency accountability requirements as outlined in section 1244(g) of the 1985 Act.

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants meet eligibility requirements and follow-up procedures to ensure that participants are complying with the terms and conditions of their contractual arrangement with the government, and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies are set forth in agency guidance (Conservation Programs Manual_440_Part 512 and Conservation Programs Manual _440_Part 508) (*http://directives.sc.egov.usda.gov/*). The program requirements applicable to FRPP participants that relate to compliance are set forth in these regulations in § 1491.4 Program requirements, § 1491.20 Cooperative agreements, and § 1491.22 Conservation easement deeds. These sections make clear the general program eligibility requirements, obligations related to easements, and requirements for operating and maintaining FRPP-funded activities.

Measure program performance. Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by the Office of Management and Budget (OMB) Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at *http://ias.sc.egov.usda.gov/PRSHOME/*. Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in agency guidance (GM_340_401 and GM_340_403) (*http://directives.sc.egov.usda.gov/*)).

The conservation actions undertaken by participating entities are the basis for measuring program performance—specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants that relate to undertaking conservation actions are set forth in these regulations in § 1491.20 Cooperative agreements and § 1470.22 Conservation easement deeds. These sections make clear participating entity obligations for acquiring easements and conservation stewardship activities, which in aggregate result in the program performance that is reflected in agency performance reports.

Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource conditions. While NRCS captures many measures of output data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes.

NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation programs.[1] In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through agency field-level business tools to help produce estimates of environmental effects accomplished through agency programs, such as the Conservation Stewardship Program. In 2006, a Blue Ribbon panel evaluation of CEAP[2] strongly endorsed the project's purpose, but concluded "CEAP must change direction" to achieve its purposes. In response, CEAP has focused on priorities identified by the panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status is available at (*http://www.nrcs.usda.gov/technical/NRI/ceap/*. Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment and performance measurement and reporting policies are set forth in agency guidance (GM_290_400; GM_340_401; and GM_340_403) (*http://directives.sc.egov.usda.gov/*).

Demonstrating the long-term conservation benefits of conservation programs is an agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation easements acquired through FRPP and conservation practices and systems applied by participants under each of its programs. The FRPP program requirements applicable to participants that relate to producing long-term conservation benefits are located in § 1491.20 Cooperative agreements and § 1491.22 Conservation easement deed. These requirements and related program management procedures supporting program implementation are set forth in agency guidance (Conservation Programs Manual 440_Part 512 and Conservation Programs Manual _440_Part 508).

Coordination of Actions Authorized Under the Soil and Water Resources Conservation Act

The 2008 Act reauthorized and expanded on a number of elements of the Soil and Water Resources Conservation Act (RCA) related to evaluating program performance and conservation benefits. Specifically, the 2008 Act added a provision stating:

"Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation."

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in agency guidance (GM_290_400 and GM_130_402) (*http://directives.sc.egov.usda.gov/*).

The coordination of the previously described components with the RCA is an agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to

[1] The exception to this is the Conservation Reserve Program (CRP); since 1987 the NRI has reported acreage enrolled in CRP.

[2] Soil and Water Conservation Society. 2006. Final report from the Blue Ribbon Panel Conducting an External Review of the U.S. Department of Agriculture Conservation Effects Assessment Project. Ankeny, IA: Soil and Water Conservation Society. This review is available at *http://www.nrcs.usda.gov/technical/NRI/ceap/*.

the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. As the Secretary proceeds to implement RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the 1985 Act.

Economic Analysis—Executive Summary

The FRPP is an important tool available to farmers, ranchers, and their communities to preserve the agricultural landscape. The local community is a key driver in farmland [3] protection efforts and is a major beneficiary, as well as incurring much of the cost. Because farmland retention efforts are driven by local decisionmakers and involve site-specific impacts that affect a host of intangible values (scenic views, environmental amenities, *etc.*), performing a traditional nationwide final benefit-cost analysis with a national scope is difficult. Despite limitations, a benefit-cost analysis offers a means to identify the main costs and describe the benefits, albeit in qualitative terms, and explore policy and program alternatives.

The main expenditure is funding for the purchase of development rights (PDR). The economic costs of farmland protection programs include the foregone economic activities fostered by development that would have taken place in the absence of FRPP and any resulting secondary effects such as the reduced tax base. FRPP is only one source of funds to offset the initial acquisition costs of PDRs for these individuals and communities. The cumulative (1996–2010) contributions on 3,489 enrolled parcels consisting of 808,515 acres includes: FRPP share—$787,444,975; entity share—$1,088,313,653; landowner donations—$347,253,305; and combined value—$2,223,011,933. The foregone economic activities need to be compared with the incremental benefits of protecting farmland, which are largely intangible, such as environmental goods and services from the land and non-market valued amenities brought about by NRCS funding. Non-market valued amenities include the public's desire for open spaces and scenic views. Also, the distributional effects of retaining an active agricultural sector in the local communities must be acknowledged.

The FRPP Final Benefit-Cost Analysis is posted at *http://www.nrcs.usda.gov/programs/farmbill/2008/benefitcostanalysis.html.* Only qualitative descriptions of the possible social benefits of farmland protection are presented in the main text of this analysis. These potential benefits are more fully described in Appendix A. Appendix B presents a method, that when refined, can potentially be used to quantitatively assess the effects of FRPP. A rigorous treatment of these benefits is not possible at this time due to a number of reasons, including the limitations in the willingness-to-pay methodology and uncertainties about extent, locations, and patterns of future development pressure.

The 2008 Act reauthorized the FRPP through FY 2012 and increased program funding. Mandatory changes were made to the program purpose, role of the United States Government, enrollment process, eligible land, and cost-sharing requirements for entities. In addition, the 2008 Act provided discretion for the agency in interpreting aspects of the mandatory provisions and other discretionary elements. The major policy scenarios analyzed in this benefit-cost analysis include:

1. Increased Funding—Authorized funding increases from $97 million in FY 2008 to $200 million in FY 2012.
2. Land Eligibility—Compensate landowners for more forest land acreage and ensure that enrolled forest land contributes to natural resource benefits.
3. Certification Process—Establish a certification process and deliver increased flexibilities for certified entities.
4. Simplifying Participation—Establish a simple process for entities to select an appraisal method and use their own terms and conditions in easement deeds, as approved by the Secretary.
5. Impervious Surface Restrictions—Establish clear guidelines for entities to consult for impervious surface restrictions.
6. Non-Federal Contributions—Establish a process to accept contributions of non-Federal funds.
7. Program Performance—Establish procedures to monitor and report on program performance.

Overall, FRPP assistance to local farmland protection programs is important from the distributional effects perspective. The FRPP attempts to assist these local decisionmakers in their efforts to protect farmland. The presence of active farmland retention programs could be interpreted as empirical evidence that local decisionmakers anticipate positive net benefits from protecting farmland, such as preventing undesirable changes to the landscape and adverse impacts on the natural environment that can result from development locally. From a national perspective, the assessment of benefits and costs is incomplete due to lack of information in existing literature. The assessment of benefits involves amenities that are indirectly traded in markets (*e.g.,* scenic view). The assessment of costs involves forecasting the level of economic activities that would have taken place in the absence of FRPP. The potential effects on benefits and costs for most of the areas of policy discretion covered in this analysis consequently are addressed qualitatively.

Summary of Interim Final Rule Changes

On January 16, 2009, NRCS published in the **Federal Register** an interim final rule at 74 FR 2809 with a 60-day public comment period that ended on March 17, 2009.

Section 2401 of the 2008 Act amended sections 1238H and 1238I of the 1985 Act to reauthorize and make significant amendments to FRPP. To implement these amendments, the interim final rule made the following changes to the FRPP regulation at 7 CFR part 1491:

Subpart A—General Provisions

- Administration—Clarified that a landowner's eligibility must be determined, as well as the land eligibility and the eligibility of the entity that receives the cost-share assistance to purchase the easement.
- Definitions—Modified several definitions of the previous rule. For instance, the definition of agriculture uses was amended to use more current and correct terminology and to broaden the definition to reflect the new statutory program purposes.
- Program Requirements
  - Incorporated the statutory requirement that NRCS provide funding for conservation easements or other interests in land versus acquiring a Federal interest in land, thereby shifting the program focus from purchasing conservation easements to facilitating the purchase of conservation easements by eligible entities.
  - Added that in States that limit the term of the easement, the term of the easement must be the maximum allowed by State law.
  - Set forth the requirements for a new certification process that an entity must meet in order to become a certified

[3] Farmland refers to agricultural land used in crop and livestock production, *i.e.,* cropland, ranch land, and pasture.

entity, as well as the process for review and revocation of certification.

○ Added a new statutory eligibility land category, "to further a State or local policy consistent with the purposes of the program."

○ Established that farms with at least 10 acres in forest cover or 10 percent in forest cover required the development of a forest management plan. Farms that were less than 100 acres in size with less than 10 acres of forest were not required to have a forest management plan developed to be eligible.

○ Clarified that lands currently under ownership by an entity whose purpose is to protect agricultural uses and related conservation values were not eligible for the program, as lands owned by these entities were already protected.

○ Described the onsite and offsite conditions that were not compatible with the program's purposes.

○ Clarified that a landowner may submit an application on land on which the mineral estate is owned by someone other than the landowner, but that USDA reserved the right to determine the impacts of third party rights upon a potential easement and to deny funding where the purposes of the program could not be achieved.

○ Defined the industry-approved appraisal methods specified in the 2008 Act as the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisition.

• Application Procedures—Established a new application process for the program. This new process established that the entity must submit an application to the State Conservationist in the State where the parcel(s) is located, and that the Chief determined whether an eligible entity qualified as a certified entity. Further, the interim final rule established that FRPP would be implemented using a continuous sign-up process, consistent with other NRCS conservation programs. The process allowed certified and non-certified eligible entities to compete under the same application and ranking process in order to simplify the application process and allowed parcels to obtain funding on equal resource-based terms, regardless of the status of the entity.

• Ranking Considerations and Proposal Selection—Established a new ranking process whereby NRCS evaluated the eligibility of both the landowner and the land prior to the scoring and ranking of the parcel for funding, because payment eligibility requirements for Adjusted Gross Income (AGI) 7 CFR part 1400 and land eligibility requirements for Highly Erodible Land and Wetland Conservation provisions at 7 CFR part 12 are a threshold requirement for program participation. In addition, parcels became ranked according to both national and State criteria. National ranking criteria were changed to reflect site (parcel) specific criteria rather than entity performance criteria, and language was added to clarify that the national requirements were mandatory for inclusion in the State ranking.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

• Cooperative Agreements—Revised cooperative agreement requirements to reflect changes necessitated by the 2008 Act, including the change that FRPP funds are used to assist eligible entities with the purchase of rights in land rather than to purchase these rights directly by the United States. The interim final rule also incorporated the new requirement that the terms of agreements be a minimum of 5 years for certified entities and 3 years for other eligible entities.

• Substituting Parcels—Incorporated 2008 Act authorization to allow a cooperating entity to substitute pending offers within their cooperative agreement.

• Funding—Reflected the 2008 Act's change to the minimum entity cost-share, an amount not less than 25 percent of the acquisition purchase price.

• Conservation Easement Deeds

○ *Deed Form*—Incorporated changes made by the 2008 Act that allow eligible entities to use their own easement deeds submitted to and approved by NRCS in advance.

○ *Contingent Right of Enforcement*—Incorporated the 2008 Act requirement that the eligible entity include a contingent right of enforcement for the Secretary in the terms of the conservation easement deed. The purpose of this right is to ensure that the easement is enforced and that the Federal investment is protected. NRCS, in the interim final rule, interpreted the contingent right of enforcement to mean a vested real property right, providing the Secretary, on behalf of the United States, the right to enforce the terms of the easement for the duration of the easement.

○ *Approval of Conservation Plan*—Eliminated the requirement that conservation districts approve the conservation plan, as this was not always consistent with local practice.

○ *Impervious Surfaces*—Retained the impervious surface limit of 2 percent, but increased the impervious surface waiver to up to 10 percent from the prior policy of 6 percent.

Subpart C—General Administration

• Violations and Remedies—Clarified that any cost recoveries levied by NRCS would be directed to the cooperating entity, not the specific landowner.

• Appeals—Replaced the term cooperating entity with eligible entity to refer to FRPP participants. This change ensured that all FRPP participants had the same rights of appeal. The interim final rule also clarified that only administrative actions were appealable, and once the easement was recorded, enforcement actions taken by NRCS were not subject to review under administrative appeal regulations. This change was consistent with appeal regulations at 7 CFR part 614 and 7 CFR part 11, as well as Federal real property law.

Summary of Amendment to the Interim Final Rule

On July 2, 2009, NRCS published a correction to the interim final rule at 74 FR 31578 and opened the public comment period an additional 30 days. The correction made the following adjustments:

• Contingent Right of Enforcement—Clarified that the contingent right of enforcement established by the 2008 Act, and defined by the interim final rule as a Federal acquisition of a real property right, was instead a condition placed upon the award of financial assistance, and though a real property right, did not constitute an acquisition subject to Federal acquisition requirements.

• Lands Owned by State or Local Government—Incorporated additional flexibility into the definition of landowner such that it did not preclude the ability of NRCS to help facilitate the placement of a conservation easement or other interest in land on properties in circumstances where an eligible entity purchased fee title to land temporarily and then re-conveyed those lands to a private landowner, such as purchasing farmland in foreclosure to prevent it from being sold at a sheriff's sale for non-agricultural development.

• Requests for Public Input—Sought public feedback as to whether FRPP could be utilized to further the Nation's efforts with regard to encouraging renewable energy production, promoting energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or reducing net carbon emissions.

Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB recently published two regulations, 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements beginning October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and sub recipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier sub awards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 apply to certain awards of financial assistance provided under FRPP. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements at § 1491.20 and will include the requisite provisions as part of the FRPP contract.

Responses to Comments and Changes to Regulation

NRCS received approximately 624 comments on the interim final rule and its amendment. This section of the preamble discusses all of the relevant comments, except for those that expressed agreement with provisions of the interim final rule. NRCS has organized the discussion alphabetically by topic.

Applicability

Comments: NRCS received seven comments recommending NRCS eliminate application of Department of Justice title standards for projects that remain under 2007–2008 cooperative agreements. Projects funded in FY 2009, and thereafter, are not subject to review under the Department of Justice title standards.

Response: FRPP, as authorized by the Farm Security and Rural Investment Act of 2002 (2002 Act), Public Law 107–171, required the Secretary to acquire a conservation easement or other interest in land. Parcels funded under FY 2007–2008 cooperative agreements are subject to the 2002 Act requirements. Since NRCS acquires a co-grantee interest in the conservation easements funded in FY 2007–2008, the transactions are subject to Federal real property acquisition requirements, including the Department of Justice title standards. NRCS does not have the authority to waive these title standards. Parcels funded in FY 2009 and hereafter are authorized by the 2008 Act, and are financial assistance transactions not subject to Federal real property acquisition requirements; therefore, no changes were made to the final rule.

Certification

Comments: NRCS received 64 comments regarding the references in § 1491.4 to certified entities. These comments urged NRCS to develop a robust certification program for certified entities. NRCS received 27 comments recommending that NRCS rewrite the rule to develop a certification program that, for certified entities, would minimize title reviews in particular.

Response: NRCS agrees that a more robust certification process will improve FRPP implementation. The criteria for certification outlined in the 2008 Act are nearly identical to the criteria for eligibility that existed in FRPP policy prior to 2008 Act enactment, with the exception of closing efficiency. Therefore, the interim final rule mirrored the 2008 Act by identifying very few differences between the agreements with certified entities and agreements with other eligible entities.

The 2008 Act transformed FRPP from a Federal real property acquisition program to a program where NRCS provides financial assistance for the purchase of a conservation easement by an eligible entity. Consistent with this shift in program purpose, NRCS has made further changes in this final rule to the certification criteria and process outlined in § 1491.4 to minimize the need for NRCS oversight of individual easement transactions. NRCS still obtains certain safeguards in relation to an entity's easement acquisition, real property such as review of template deeds and the incorporation of a right of enforcement; however, the actual easement acquisition process is the responsibility of partners. The certification procedures set forth in the interim final rule did not address this shift fully.

NRCS believes that the revisions to § 1491.4 provide a more comprehensive certification program that will better implement the 2008 Act's shift in program purpose and help NRCS focus on other aspects of program implementation to better protect the long-term viability of higher quality and more vulnerable agricultural lands. Upon review and consideration of the respondents' comments, NRCS has adopted criteria to improve identification of eligible entities that have the capability to manage FRPP lands. Additionally, a more comprehensive certification program gives NRCS greater administrative flexibility in implementing the FRPP program.

In particular, NRCS reviews criteria during the certification process, including an entity's acquisition, management, and enforcement standards and processes to ascertain whether the entity exhibits sufficient capability and experience to manage FRPP financial assistance prudently. NRCS has determined that the certification criteria in the interim final rule unnecessarily limit the ability to identify eligible entities that have the resources and experience to assume the flexibility afforded by certification status. Therefore, a primary qualification for certification status is that an eligible entity must hold and manage a minimum of 25 easements. NRCS derived this number from the total acres owned and under easement by land trusts, the total number of land trusts, and the average size FRPP easement. Land trust figures are taken from the Land Trust Alliance 2005 National Land Trust Census Report.

Additionally, for an eligible entity to qualify for certification, it must hold and manage a minimum of five FRPP conservation easements and have acquired these easements using industry-approved appraisals, title clearance reviews, and deed reviews for each transaction. This minimum number of FRPP easements will demonstrate the entity has experience with FRPP cooperative agreements and FRPP easement acquisition process. Entities may request in writing a waiver of the 25-easement requirement from the Chief. The certification of an entity does not extend to eligible entities funded through the certified entity if the eligible entity is not held to the same standards as the certified entity, and the certified entity is not identified as a co-grantee in the conservation easement deed. If an eligible entity does not meet the certification criteria, NRCS will not certify the eligible entity and will review each transaction's procedures, including the appraisal, deed, and title to ensure that the Federal investment is protected.

As to the greater administrative flexibility provided by certification, NRCS will not require NRCS' appraisal

review, title review, and conservation easement deed review in advance of easement acquisition since a certified entity demonstrates, during the certification process, that it has credible processes of its own that ensure its conservation easements will meet FRPP purposes. Therefore, a certified entity will be authorized to close on individual easement transactions without prior NRCS review and approval of the particular deed, title, or appraisal. If any of these certification criteria are not met, NRCS may still certify the entity, albeit with conditions, such as a requirement that the entity adjust those aspects of its program, *e.g.,* particular deed provisions that are needed to ensure that the acquired conservation easements meet FRPP purposes and are enforceable over the long term.

Regardless of the certification status of an entity, NRCS will conduct quality review checks upon a percentage of transactions, and if any aspect of a transaction fails, NRCS will provide the entity with time to rectify the errors, a minimum of 180 days. If a certified entity fails to do so, the State Conservationist will send, by certified mail, return receipt requested, written notice of proposed decertification of the certified entity's certification status or eligibility. The certified entity may contest the Notice of Proposed Decertification in writing to the State Conservationist within 20 calendar days of receipt of the notice of proposed decertification. If the State Conservationist decides to decertify, the entity will be given written notice of the determination which will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the entity, the entity will be given written notice of that determination. The decertification determination will be based on the administrative record which will be comprised of the Notice of Proposed Decertification and supporting documents, any documents pertaining to the entity's lack of compliance with the certification criteria, and if submitted, the entity's written response and supporting documentation. The Easement Programs Division will maintain a national list of certified and de-certified entities that each NRCS State office will check prior to entering into a cooperative agreement. The period of decertification may not exceed 3 years, and the entity may reapply for certification after the period of decertification has expired. NRCS will recertify an entity that meets the requirements as outlined under § 1491.4(d).

NRCS added a new paragraph (e) to § 1491.4 to provide additional clarification to the certification process and redesignated paragraphs (e), (f), (g), and (h) as (f), (g), (h), and (i). A new paragraph (j) is added to provide policy on substituting parcels.

This new approach to certification was not identified in the interim final rule and instead, is based upon comments received from various respondents to the interim final rule. Since the public has not had the opportunity to comment upon this new approach, NRCS will receive public comment on the certification and decertification approach set forth in this rulemaking. NRCS is not soliciting comments on any other aspect of this FRPP final rulemaking since NRCS has already solicited and received public comments on these matters as identified herein.

Comments: NRCS received four comments suggesting a change to § 1491.4(d)(5) of the interim final rule to clarify that a dedicated fund be a necessary requirement for certified entities that are nongovernmental organizations. The fund is in place for enforcement purposes, and the certified entities that are required to have a dedicated fund must have a sufficient annual budget designation for annual monitoring and administrative functions for conservation easement management purposes.

Response: NRCS concurs with the recommendation made by the respondents. The definition of dedicated fund was modified to clarify that a dedicated fund is required for certified entities that are nongovernmental organizations. The purpose of the dedicated fund is to provide a long-term source of funds for management and monitoring of easements acquired and held by nongovernmental organizations. Dedicated funds are not necessary for certified entities which are State and local units of government, because such entities typically have taxing authority for the long-term operation and management of easement programs. In contrast, nongovernmental organizations typically rely on private funding to support their operations and management of easements, thus a dedicated fund ensures a long-term source of funds for such activities. The specific amounts required in the dedicated fund are clarified in policy. The current requirements for the capitalization of the endowment funds are $50,000 for legal defense and $10,000 per easement for management and monitoring. NRCS will adjust the amount required for the dedicated fund based on NRCS' experience, feedback from the nongovernmental organizations, and standards for such accounts within the farmland protection community.

Comments: NRCS received 33 comments recommending that NRCS conduct only spot checks of appraisals rather than a review of every appraisal.

Response: NRCS will conduct appraisal reviews differently depending upon whether an eligible entity has been certified or not. As described earlier in this preamble, NRCS will only spot check a percentage of a certified entity's transactions. Additionally, the spot checks of a certified entity's appraisals will be to ensure the certified entity followed its appraisal procedures properly, including any adjustments to those procedures required by NRCS as part of certification.

However, for other eligible entities, NRCS will still require more extensive appraisal reviews, including technical and administrative reviews, to ensure that the appraisal meets the detailed NRCS standards and specifications required under the cooperative agreement. Appraisal reviews document the validity of the expenditure of funds. For appraisals submitted by eligible entities that are not certified, agency policy requires a technical review of the first appraisal report that is done by a particular appraiser each year. NRCS will conduct technical review on a minimum of 10 percent of appraisals submitted for approval in each State each year. NRCS standards require sufficient detail to allow for its review of an appraiser's work and to ensure that the less experienced eligible entities are appropriately following procedures.

Conservation Easement Deeds

Comments: NRCS received 44 comments recommending that NRCS not require conservation easement deed templates used by eligible entities to be submitted to National Headquarters, nor require review and approval of each transaction's deed in advance of use. Five respondents recommended that NRCS continue to review conservation easement deeds.

Response: Section 1238I(g)(4) of the 1985 Act authorizes an eligible entity to use its own terms and conditions in conservation easements and other interests in land as approved by the Secretary as long as the terms and conditions "(A) are consistent with the purposes of the program; (B) permit effective enforcement of the conservation purposes of such

easements or other interests; and (C) include a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted." As described above, NRCS agrees that once a template easement deed form has been reviewed and approved, certified entities do not need to seek prior NRCS review and approval of the conservation deed for each transaction. However, for eligible entities that are not certified, NRCS will continue to require that the eligible entity submit to NRCS the deed, title, and appraisal for review prior to closing to ensure that such documents meet NRCS specifications. No changes were made to the final rule.

Comments: NRCS received one comment requesting NRCS be aware that State statutes often specify the deed requirements for eligible entities.

Response: NRCS recognizes that State statutes require particular provisions, and NRCS will work with eligible entities to address any conflicts between State statutes and FRPP program requirements. However, NRCS must ensure that deed terms are consistent with FRPP purposes as described above. No changes were made to the final rule.

Comments: NRCS received one comment asserting that the Federal Government has no authority to enforce a prohibition on future State or local condemnation. The respondent maintains that the Federal Government's contingent right of enforcement is merely a mechanism to ensure terms and conditions of FRPP easements are honored. The respondent asserted that FRPP purposes can be guaranteed by other means such as requiring a proportionate share of condemnation proceeds be paid to the Federal Government. The respondent contends that the interim final rule's current condemnation prohibition is causing many States to forego participation in FRPP.

Response: Under the 2008 Act, Congress required that a right of enforcement for the Secretary be included in FRPP funded deeds. This right of enforcement is held by the Secretary and runs with the land. As such, it is a vested interest in real property. Under well-established constitutional principles, State and local governments do not have the authority to condemn a Federal interest in land.

Comments: NRCS received one comment recommending that NRCS' conservation plans identify conservation values.

Response: NRCS agrees with the respondent. NRCS' conservation plans already identify conservation values.

Comments: NRCS received several comments related to NRCS' identification of various activities as agricultural uses or non-agricultural uses. NRCS received three comments recommending that NRCS allow on-farm energy production in conservation easement deeds. NRCS also received three comments that argued that the restriction on subdividing a parcel under a FRPP conservation easement deed contradicts State regulations or statutes, and has no basis in the 2008 Act. Two comments identified that the more restrictive conservation easement deed requirements spelled out in the interim final rule and the new cooperative agreement template, threaten Maine farmers in a number of ways including failure to address on-farm energy production and use. Seven respondents argued that limitations on signage and snowmobiles threaten Maine farmers. One respondent asserted that the requirement to forego future rights to residential development contradicts Maryland's regulations or statutes, and has no basis in the 2008 Act. Three comments recommended allowing farms enrolled in FRPP to host non-farm rural enterprises.

Response: NRCS identifies agricultural and non-agricultural uses pursuant to its responsibilities under FRPP. In particular, the purpose of FRPP as stated in the 2008 Act is to "protect the agricultural use and related conservation values of eligible land by limiting non-agricultural uses of that land." Additionally, the identification of agricultural and non-agricultural uses is relevant in regard to the terms and conditions of the cooperative agreement. Section 1238I(g)(1) of the 1985 Act requires NRCS to stipulate in the cooperative agreement the terms and conditions under which cost-share assistance is provided, and section 1238I(g)(4) of the 1985 Act authorizes NRCS to review the terms of an eligible entity's conservation easement to ensure the terms and conditions are consistent with FRPP. Activities that are related to agricultural production or directly support the agricultural operations are agricultural uses of the land. Other activities, though they commonly may occur on agricultural lands, are not agricultural uses, and thus, NRCS may require eligible entities to incorporate limitations into the terms of approved conservation easement deeds.

For example, the on-farm production of energy presents a combination of agricultural and non-agricultural uses, and NRCS must find a balance between those uses. Where the energy produced on a farm is for on-farm usage, NRCS considers such activity an agricultural use. However, the same farmers who wish to protect their farms from development are often the same landowners who care about meeting the Nation's future energy needs. While the on-farm production of energy for off-farm use is not an agricultural use, NRCS believes that a complete prohibition of such uses is not required by statute. Thus, NRCS will work with eligible entities to develop appropriate limitations in the deed terms that focus on the impact that such activities have upon the particular easement area's agricultural viability, such as proposed siting and density restrictions, rather than strictly prohibiting such uses.

The more complex activities to address in conservation easement deeds are those that, when exercised by a farmer's family and its guests, should be authorized, but when exercised on a commercial scale, may represent a conversion to non-agricultural use. However, if the activity does not interfere with the agriculture use, like snowmobiling, it may be considered a permitted activity. Other activities, such as the development of all terrain or off-road vehicle recreation, significantly impacts the resource and represents conversion of a farm to non-agricultural use, and thus, should be prohibited. NRCS recognizes that a balance must be struck between authorized, prohibited, and restricted activities within the terms of a conservation easement deed to ensure protection of the agricultural viability of the land while allowing flexibility for reasonable use of the land into the future. NRCS will continue to work with eligible entities to develop the appropriate balance.

Comments: NRCS received 11 comments recommending that NRCS eliminate the NRCS reserved right.

Response: Section 1238I(f)(2) of the 1985 Act requires that a "contingent right of enforcement" be included in the terms of a conservation easement or other interest in eligible land that is purchased using cost-share assistance provided under the program. The contingent right of enforcement is required by statute, protects the Federal investment, and cannot be eliminated by NRCS.

Comments: NRCS received three comments stating that NRCS should not allow cooperating entities to run FRPP.

Response: While NRCS works closely with cooperating entities, NRCS will not abdicate its responsibility to maintain quality assurance oversight over the transactions funded through FRPP. NRCS requires cooperating entities to meet eligibility requirements, and requires that each transaction funded also meets NRCS eligibility and priority

requirements. For example, rather than simply adopting the ranking criteria of the cooperating entity, NRCS reviews and ranks the transactions it funds using NRCS national and State criteria. No changes were made to the final rule.

Comments: NRCS received one comment recommending that NRCS not involve local conservation districts in approving the conservation plan.

Response: Section 1491.22(e) of the interim final rule makes clear that local conservation districts are not involved in approving conservation plans. While district staff is often involved in the development of the conservation plan, the conservation plan is ultimately developed by NRCS, in consultation with the landowner, and implemented according to the NRCS Field Office Technical Guide (FOTG).

Comments: NRCS received one comment recommending that under § 1491.22(g) of the interim final rule, the conservation easement review conducted by NRCS prior to easement closing should be limited to a determination that the conservation easement deed conforms to the conservation easement form contained in the executed cooperative agreement.

Response: The acceptance referenced in § 1491.22(g) of the interim final rule pertains to the land, not to the terms of the conservation easement deed. However, all of the terms contained in the conservation easement deed are not necessarily contained in the conservation easement form in the cooperative agreement. For example, the deed template does not identify the grantors and the capacity in which they are conveying the land. During its reviews, NRCS has identified many situations where the draft deed for a particular transaction did not correctly identify the grantors or the land area to be encumbered.

Comments: NRCS received four comments that the general indemnification requirement of § 1491.22(j) of the interim final rule contradicts State regulations or statutes and has no basis in the 2008 Act. The respondents argue that NRCS should allow entities to modify the indemnification language of conservation easement deeds.

Response: NRCS recognizes the limitations that public entities have in regards to entering into indemnification agreements. NRCS, working with the Office of the General Counsel, modifies its indemnification language for public entities to comply with State laws while ensuring adequate protection to the United States. Although the 2008 Act does not specifically mention addressing potential liability issues, it is common practice for conservation easement holders to include such clauses. Moreover, as part of the NRCS duty to protect the public interest, it is good administrative practice to include such clauses.

Comments: NRCS received one comment recommending that language be added requiring NRCS to review and approve any amendments to easement deeds.

Response: NRCS agrees with this recommendation. The language in § 1491.22(k) of the interim final rule has been modified to require that NRCS must review and approve any material amendments to conservation easement deeds.

Conservation Easement Deeds–Impervious Surfaces

Comments: NRCS received 63 comments concerning impervious surfaces in § 1491.22(i). The comments assert that, despite congressional intent and statutory direction, NRCS continues to impose a standard of no more than 2 percent impervious surfaces on FRPP easement areas. The respondents asserted that NRCS should not set a numerical limit, but instead allow eligible entities to use their own terms and conditions that are consistent with the agricultural activities to be conducted. NRCS also received 20 comments supporting an impervious surface limitation, and several respondents recommended that the impervious surface limit be scaled to the size of the easement so that smaller easements would be authorized to have a larger percentage in impervious surface. These respondents also recommended that State Conservationists have flexibility to approve a local entity's waiver processes for impervious surfaces if the processes are applied on a parcel-by-parcel basis.

Response: The purpose of the impervious surface standard is to limit the conversion of productive agriculture lands to non-agricultural use within the easement area. An impervious surface represents an irretrievable commitment of resources to a particular use, and thus, has an impact upon the long-term viability and adaptability of the agricultural operation. NRCS does not intend to limit the expansion, for example, of a confined animal or permanent greenhouse operation. However, NRCS will not permit the impervious surface of these operations to exceed the maximum allowed under § 1491.22(i) in the FRPP rule. Existing NRCS policy permits State Conservationists to waive the 2 percent impervious surface limitation on a parcel-by-parcel basis up to a maximum of 10 percent. In addition, NRCS has revised policy to allow eligible entities to develop and submit their own impervious surface waiver process to the State Conservationist for review and consideration. The process must be approved by the State Conservationist and applied by the eligible entity on a parcel-by-parcel basis.

Cooperative Agreements

Comments: NRCS received three comments on the topic of amendments to cooperative agreements. The respondents recommended that multi-year cooperative agreements be revised to reflect any changes between the final rule and the interim final rule.

Response: Cooperative agreements may be modified subject to the mutual agreement of NRCS and the cooperating entity. The final rule does not require any substantive changes to the cooperative agreements made prior to the final rule.

Comments: NRCS received one comment that recommended the agency provide for the ability to make property substitutions as part of FRPP.

Response: Section 1491.20(a)(5) of the interim final rule already provides for the ability to make parcel substitutions upon mutual agreement of the parties. No changes were made to the final rule.

Comments: NRCS received one comment regarding the manner in which the New Jersey farmland preservation program purchases easements and its interface with FRPP. The respondent expressed concern that FRPP policy requiring the disbursement of the entire payment during the life of the cooperative agreement could prevent New Jersey counties and townships from using FRPP funding. In particular, New Jersey farmland preservation programs often purchase conservation easements with proceeds from general obligation debt, paying in installments over an extended period of time. However, cooperative agreements are for a maximum of 5 years. Further, the respondent requested clarification as to whether NRCS would consider certain debt obligations incurred by the cooperating entity to the benefit of the landowner as constituting a cash contribution rather than an installment payment.

Response: Section 1238I(c) of the 1985 Act describes the financial assistance provided from NRCS to eligible entities as cost-share assistance. Section 1238I(c) also requires that the Federal share for purchasing a conservation easement or other interest in eligible land will not exceed 50 percent of the appraised fair market

value. The requirement that an entity must provide at least 25 percent of the purchase price of the acquisition is also a statutory requirement. The situation suggested by the respondent would violate the statutory requirements for the program by requiring NRCS or the landowner to cover the statutorily required cost-share expenses for the entity. NRCS, by statute, may only provide funding for the costs of the easement purchase and not the associated administrative costs such as title insurance, surveys, appraisals, easement monitoring, and other related administrative fees and transaction costs incurred by the entity. Additionally, funds for FRPP appropriated to NRCS by Congress must be expended within 5 years from the fiscal year of obligation. Obligated funds not expended within the 5-year period will no longer be available for payment after the fifth year of obligation. In response to the respondent's comment regarding whether NRCS would allow the entity's obligation to count as a cash contribution from the landowner, this is not permitted for the same statutory reasons mentioned earlier. The statute requires the entity to provide at least 25 percent of the purchase price of the easement or other interest in property. The purchase price is defined as the appraised fair market value of the easement minus the landowner donation. The eligible entity must contribute its statutorily required share to purchase the easement, and debt obligations do not count towards satisfying an eligible entity's required share of the purchase price of an easement.

Definitions

Comments: NRCS received two comments requesting that the FRPP final rule provide a definition for the phrase, land that furthers a State or local policy consistent with the purposes of the program and gives the State Conservationist, with input from the State Technical Committee and FRPP partner organizations, the ability to decide what lands might further a State or local policy consistent with the program.

Response: Given the potential range and variety of State or local policies that may exist, NRCS does not believe that a definition "that furthers a State or local policy consistent with the purposes of the program" would provide much meaning. Additionally, FRPP purposes are identified by statute. The final rule has not been modified to include this definition. The 2008 Act included an additional category of eligible land which was "land, the protection of which will further a State or local policy consistent with the purposes of the program." The purpose of FRPP is to protect the agricultural use and related conservation values of eligible land by limiting non-agricultural uses of that land. NRCS will allow State Conservationists to determine which State and local policies are consistent with the stated purposes of FRPP for this category of eligible land.

Agricultural Use

Comments: NRCS received 11 comments recommending that NRCS accept any State's definition of agriculture as contained in State or local farmland protection legislature, regulation, and ordinance.

Response: The definition of agricultural use in the interim final rule, in substantial part, is the same as the definition of agricultural use used in the 2003 FRPP final rule published at 68 FR 26461, May 16, 2003. FRPP defers to State definitions, but cannot allow uses that decrease the agricultural productivity of the soil such as sod-farming or balled and burlap nursery stock production. Some States include in their definition of agriculture use activities that may decrease the agricultural productivity of the soil. No changes were made to the final rule.

Forest Land

Comments: NRCS received three comments requesting that NRCS change the first sentence in the definition of forest land to "Forest land means a land cover or use category that is at least 10 percent stocked by non-invasive woody species of any size." The respondents argue that NRCS should redefine the term forest land to be consistent with the definition cited by the USDA Forest Service Forestry Inventory and Analysis Program, and should be limited to nonindustrial private forest land (NIPF) to ensure a focus on family farmers who own forests.

Response: With regard to the respondents' first comment, NRCS adopted the definition of forest land that is used throughout the NRI. NRCS will use this definition of forest land to ensure consistency with other NRCS programs and to ensure the quality and consistency of NRCS data. With regard to the respondents' last comment pertaining to ensuring a "focus on family farmers who own forests," Farm Bill programs are available to all private landowners that meet the AGI limitation of $1 million per year. Several Farm Bill programs, such as EQIP and the Conservation Stewardship Program, limit forest land eligibility to NIPF. FRPP does not limit land eligibility to NIPF. Limiting eligibility to NIPF could limit the ability of the program to protect contiguous sections of agricultural lands where land conversion pressures are higher.

Forest Land of Statewide Importance

Comments: NRCS received one comment requesting that the final rule add a definition for forest land of statewide importance that includes priority forested areas or regions of the State that have been identified by the State forester and informed through statewide assessments and strategies pursuant to sections 8001 and 8002 of the 2008 Act.

Response: NRCS agrees with the recommendation of the respondent and has added a definition to the final rule. Forest land of statewide importance means forest land that the State Conservationist, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State, and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

Forest Management Plan

Comments: NRCS received three comments recommending that NRCS recognize and accept forest plans as specified in section five of the Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2103c, or other forest plans developed and approved solely by a State forester. The respondents also suggested redefining the term forest management plan to include forest stewardship plans as specified by the Cooperative Forestry Assistance Act, and forest management plans developed under a third-party audited forest certification system, such as the American Tree Farm System.

Response: The definition of forest management plan, as currently written, permits the use of the various plans described by the respondents. No changes were made to the final rule.

Impervious Surface

Comments: NRCS received two comments requesting a definition for impervious surface.

Response: NRCS agrees with the respondents that a definition for impervious surface as used in the context of FRPP is necessary. The rule has been modified to provide such definition. NRCS would like to clarify that the following activities are not considered impervious surfaces for the purposes of FRPP: Roads and parking

lots with soil or gravel surfaces, conservation practices identified in the FOTG and in a conservation plan for the subject farm or ranch, and temporary greenhouses that cover the soil surface for less than 6 months.

Landowner

Comments: NRCS received 13 comments requesting that NRCS allow organizations that qualify as eligible entities under FRPP to also be eligible as landowners and permitted to apply for cost-share assistance under FRPP. NRCS also received one comment recommending that NRCS provide for an exemption from the definition of landowner such that a nongovernmental organization would have the ability to purchase an FRPP property in order to keep it from being developed while the funds to protect it were being secured.

Response: Lands currently under ownership by an entity whose purpose is to protect agricultural uses and related conservation values, such as a nongovernmental organization, are already protected without funding from FRPP. Therefore, an eligible entity normally cannot qualify as a landowner. However, the July 2, 2009, correction to the interim final rule incorporated additional flexibility into the definition of landowner at § 1491.3 to allow NRCS to facilitate the placement of a conservation easement or other interest in land on properties in limited circumstances where an eligible entity purchases fee title to land temporarily, and then re-conveys those lands to a private landowner. In order for this flexibility to apply, the parcel must be transferred back to private ownership before or at closing on the easement. No further changes were made to the final rule.

Parcel

Comments: NRCS received one comment requesting the agency define the term parcel because the agency uses the term interchangeably when it refers to farms and ranches.

Response: NRCS agrees with the respondent's comment. The final rule has been modified to define the term parcel. Parcel means a farm or ranch submitted for consideration for funding under this part.

Public Access

Comments: NRCS received one comment requesting that NRCS define the phrase public access.

Response: The State and local ranking criteria are determined by the State Conservationist, with advice from the State Technical Committee. The State Technical Committee provides information, analysis, and recommendations to the State Conservationist on implementation of conservation programs under Title XII of the 1985 Act. The interim final rule identified that eligible entities may receive additional ranking points under the State ranking criteria if the landowner is willing to allow public access for recreational purposes. NRCS has removed this as a potential ranking criterion. NRCS is cognizant of the potential biohazards that public access presents to an active agricultural operation, and thus, will not use public access as a ranking factor for FRPP assistance.

Right of Enforcement (Original Interim Final Rule Definition)

Comments: NRCS received 32 comments asserting that the agency's position that the contingent right of enforcement is a vested real property right is inconsistent with the intent of Congress.

Response: NRCS addressed the respondents' comments in its July 2, 2009, correction to the interim final rule published at 74 FR 31578. The correction to the interim final rule at § 1491.3 defines the contingent right of enforcement as a vested right set forth in the conservation easement deed. However, as explained below, the contingent right of enforcement is a condition of providing assistance and is not an acquisition subject to the Department of Justice title standards.

Right of Enforcement (Correction to the Interim Final Rule § 1491.22(d))

Comments: NRCS received two comments critical of NRCS' contingent right of enforcement. The respondents argued that USDA's insistence on maintaining the right to enforce the FRPP conservation easement in perpetuity regardless of State and local future needs is causing many States to forego participation in FRPP. NRCS also received eight comments that applauded the change in language made by the correction to the interim final rule regarding the contingent right of enforcement and the elimination of Department of Justice title standard requirements.

Response: Section 1238I(f)(2) of the 1985 Act explicitly requires that a contingent right of enforcement be included in the terms of each FRPP conservation easement deed. As the correction to the interim final rule explained, as a *term* of the conservation easement, the contingent right of enforcement is a vested real property right which provides the Chief, on behalf of the United States, the ability to sue to ensure the protection of the conservation values identified in the conservation easement deed. Because the enforcement right is required by statute, NRCS has no authority to remove it. Moreover, the very purpose of the right is to protect the public investment in conservation and to prevent the possibility of future divestment that the first commenter discusses.

Comments: NRCS received one comment that recommended NRCS allow cooperating entities to consider acquisition costs as part of the purchase price.

Response: FRPP cost-share is limited to the cost of purchasing the easement and is defined in the statute in reference to the fair market value of the easement. There is no authority for NRCS to provide cost-share assistance for the other costs associated with conservation easement acquisition.

Comments: NRCS received one comment that requested NRCS inform cooperating entities of the acquisition costs for which they are responsible.

Response: Acquisition costs have always been the responsibility of the cooperating entity and encompass the standard direct acquisition costs and due diligence responsibilities of purchasers of conservation easements. Additional information on typical standards and practices of easement acquisition and management may be found on the Land Trust Alliance Web site at *http://www.landtrustalliance.org*. No changes were made to the final rule.

Program Requirements

Comments: NRCS received one comment requesting clarification about how program funds will be available to eligible entities to partner with NRCS to acquire forest land. The respondent requested clarification as to whether eligible entities must consult with the State Forester to determine what constitutes characteristics of viability, as mentioned in the 2008 Act, and the extent to which forest land may satisfy that determination, as well as to determine the extent and type of buffer necessary and the appropriate measures to maintain adequate buffer capacity.

Response: The focus of the program is the protection of working farms and ranches. The inclusion of forest land as an allowable land use facilitates the enrollment of farms and ranches with a high percentage of forest land. NRCS is interested in assisting landowners in managing forest lands, and is relying on the forest management plan to guide landowners. While the State Forester is a valuable source of information and guidance, the FRPP rule does not

require an eligible entity to consult with the State Forester to determine the characteristics of viability. The buffers mentioned in the 2008 Act and the final rule are buffers to protect the farm from development, not necessarily to function as a water quality buffer.

Comments: NRCS received three comments that FRPP should be redesigned to be a grant program similar to block grants where Federal agencies focus on the results and facilitate local management of the program.

Response: The statute describes the program as a cost-share program. The original House legislation proposed a grant program; however, Congress did not adopt that provision of the legislation in the Conference Report. In the Conference Report, Congress designed FRPP as a program to provide financial assistance through a cooperative agreement to facilitate the purchase of conservation easements by eligible entities. As defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6304 *et seq.,* cooperative agreements are different from grants because, among other things, there is a higher level of Federal involvement. This is consistent with the FRPP statutory requirements which require significant involvement of the Secretary, including setting cooperative agreement requirements, certification, conservation planning, and enforcement.

Comments: NRCS received two comments asserting that the requirement that eligible entities have pending offers to purchase conservation easements or other interests in eligible land before applying for FRPP funds is arbitrary and burdensome.

Response: Section 1238H of the 1985 Act defines eligible land as "land on a farm or ranch that is subject to a pending offer for purchase from an eligible entity." Therefore, the pending offer is required to meet land eligibility criteria. Additionally, securing a pending offer ensures that the landowner is serious about selling an easement. No changes were made to the final rule.

Comments: NRCS received one request that the term facilitate be added to the purpose of the program.

Response: NRCS agrees with the respondent. However, the term facilitate was added to the language of § 1491.4(a) of the interim final rule; therefore, no change is required to address this comment. NRCS believes that the language of § 1491.4(a) affirms NRCS has shifted the focus of the program from purchasing conservation easements to facilitating the purchase of conservation easements by eligible entities. Also, adding the term facilitate identifies that NRCS will promote farm and ranch land protection, not that it will decrease the accountability required of cooperating entities.

Comments: NRCS received 17 comments expressing concern about removal of the specific reference to topsoil protection as a primary program purpose.

Response: Section 2401 of the 2008 Act revised the program purpose of FRPP so that the language no longer includes protection of topsoil. The purpose of the 2002 Act was "protecting agricultural use and related conservation uses." NRCS is not authorized to change the purpose of the program. Even so, the protection of topsoil remains one of FRPP purposes as is made clear by the criteria for eligible land—"prime, unique, or productive soil."

Comments: NRCS received one comment suggesting consideration of optional term easements consistent with State program requirements, where available.

Response: Section 1491.4(b) of the interim final rule already provided for the maximum term allowed by State law. Optional term easements are often for less than the maximum term allowed by State law, and NRCS believes that the FRPP Federal investment is best served by permanent or the longest-term easement that is available. Therefore, NRCS did not adopt the recommendation of the respondent.

Comments: NRCS received one comment recommending that NRCS allow entities to be qualified as eligible without being associated with a parcel.

Response: Entities can be considered qualified to apply for FRPP financial assistance without having any parcels being considered for financial assistance. Because the entity's eligibility may vary over time as funding and staff wax and wane, an entity will have to be qualified at least annually unless they are an entity associated with a cooperative agreement with a term of 3 or 5 years.

Comments: NRCS received 10 comments recommending that the final rule provide a more qualitative standard for eligible land that is consistent with existing State and local program requirements. The respondents argued that land eligibility tied to a percentage of the farm in certain soil types is inappropriate.

Response: Congress established the criteria for eligible land in the 2008 Act. Section 1491.4(c) further clarifies program eligibility criteria. A criterion for land eligibility in the 2008 Act is prime, unique, and other productive soils. NRCS has national standards for prime, unique, and important farmland soil that have been developed in cooperation with Land Grant Universities in each State. The national target for prime, unique, and important farmland soil in FRPP, set by the White House Office of Management and Budget, is 65 percent of the total acres enrolled in FRPP. No changes were made to the final rule.

Comments: NRCS received one comment asserting that there is no clear rationale as to why an easement cannot contain more than two-thirds forest land. The respondent urges flexibility in this figure to allow for greater acreages if the forest meets the viability test as identified in the 2008 Act, and that there is no statutory restriction on amount of the forest land that can be enrolled.

Response: The limitation of two-thirds forest land is to avoid conflicts with the Forest Legacy Program as requested by the USDA Forest Service. No changes were made to the final rule.

Comments: NRCS received 75 comments asserting that the requirement for forest management plans is burdensome. The respondents requested that NRCS eliminate this requirement, or at least make the threshold 50 acres. NRCS also received one comment stating that the forest management plan requirement was perfect.

Response: The 2008 Act requires that forest land enrolled in FRPP contributes to the economic viability of the farm or serves as a buffer from development. A management plan is a minimal requirement to prove land eligibility and will be the primary means by which economic viability will be determined. In response to comments on the interim final rule, the final rule increased the amount of acreage enrolled in FRPP requiring a forest management plan to 40 contiguous acres, or 20 percent of the easement area from 10 contiguous acres or 10 percent of the easement area. Forest land that contributes to the economic viability of the farm may include parcels of forest with viability for timber harvest, hunting, or other recreational uses for which a fee may be charged. Section 1491.4(g)(2) of the final rule has been modified by adding "or serves as a buffer to protect an agricultural operation from development" to allow the Chief to identify other means for which the contribution of FRPP to the economic viability can be demonstrated.

Comments: NRCS received eight comments asserting that NRCS should not require hazardous materials records search and site reviews.

Response: NRCS does not require the eligible entity to do hazardous materials records search. However, the hazardous materials records search, site review, and landowner interview are basic due diligence requirements that are recommended for any purchaser of real property. NRCS may conduct its own hazardous materials records search, site review, and landowner interview to ensure public funds are not being used to acquire an interest in contaminated sites.

Comments: NRCS received one comment that the term suitability may need to be replaced with unsuitable for this sentence to make sense.

Response: NRCS agrees with the respondent. Section 1491.4(f)(8) has been modified to reflect the commenter's suggestion.

Comments: NRCS received one comment supporting the provision in § 1491.4(f)(9) that eligible land "may be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant and may be offered for participation in the program."

Response: NRCS appreciates the respondent's support for the provision. NRCS will assess the potential impact that the third party rights, such as severed or leased mineral rights, may have upon achieving the program purposes. NRCS reserves the right to deny funding for any application where existing encumbrances will have an adverse impact upon the ability to protect the agricultural viability of the land, and such encumbrances are not able to be resolved during the title clearance process.

Comments: NRCS received one comment that requested NRCS not allow large entities to dictate the terms of the program.

Response: NRCS uses a ranking process as described in § 1491.6 of the final rule to ensure all cooperating entities are treated equally. The process ranks the parcels to be selected for funding, not the entity. The entity must meet the eligibility criteria as described in § 1491. NRCS will not abdicate its responsibility to ensure that FRPP is administered in a manner that protects Federal investment in farmland protection.

Ranking Considerations and Proposal Selection, § 1491.6 of the Interim Final Rule

Comments: NRCS received one comment recommending that NRCS delete the suggested State criteria involving succession plans.

Response: The State criteria are suggestions only. They are not requirements. USDA encourages succession planning for farmers and ranchers; therefore, no changes were made to the final rule.

Comments: NRCS received one comment recommending deletion of the suggested State criteria involving access for recreation.

Response: As discussed above, NRCS removed the reference to priority for allowing public access to acknowledge the biohazard concerns of agricultural operations.

Comments: NRCS received 80 comments asserting that delineating specific national criteria in the rule that are not called for by statute may conflict with established State and local criteria. The respondents argue that certified entities should be allowed to use their own ranking and proposal selection process, and that NRCS should identify broad categories, but not specific criteria, in order to facilitate comparison between applications from certified and non-certified entities.

Response: NRCS believes that it is the ranking aspect of FRPP that provides the greatest assurance that FRPP purposes are being met, and national criteria are vital to the ranking process. Certification alone does not ensure that the parcels selected will best meet FRPP purposes. The national ranking factors in the 2003 FRPP final rule only provided weight to the cooperating entities with the longest tenure and the largest budgets and staff. No weight was given to the quality of the parcels. The national ranking factors in the 2009 interim final rule removed the bias in favor of established cooperating entities with large budgets and staff, and placed greater emphasis on the quality of the parcels. Parcels submitted by all eligible entities are treated equally once the eligible entities have met the eligibility criteria. In every State except two, parcels are submitted by certified and non-certified eligible entities. There must be a selection process that is common to both certified and non-certified entities. NRCS State offices may score and weigh the national ranking factors to reflect the State's needs and add ranking factors that reflect State or local priorities. NRCS accepts applications on a continuous basis. The announcement of the application ranking date is changed from 60 days to 30 days before ranking to allow State offices to select eligible parcels and obligate funds faster. The reduced time will also allow States to announce multiple ranking dates.

Violations and Remedies

Comments: NRCS received one comment that asserted that if NRCS finds that a grantor has violated the easement, then NRCS should pursue cost recovery directly from the grantor without obligation from the grantee. The respondent believes that NRCS should only pursue legal action against the grantee if NRCS feels the grantee is violating its obligations.

Response: Section 1491.30(c) of the interim final rule states that the landowner will be liable for any costs. NRCS has identified that it will only seek to enforce an easement if the grantee has failed to do so; therefore, no changes were made to the final rule.

Miscellaneous

Comments: NRCS received one request that NRCS use eligible entity in place of cooperating entity.

Response: NRCS agrees with the respondent. The change is required for clarity and has been made in the final rule.

Comments: NRCS received one request that NRCS use eligible entity in place of grantee.

Response: NRCS agrees with the respondent. The change is required for clarity and has been made in this final rule where applicable. However, there are certain situations where grantee is the appropriate term, and NRCS retained its use in those circumstances.

Comments: NRCS received one request that the agency not use eligible entity to address an entity before it is determined to be eligible.

Response: NRCS agrees with the respondent. The change is required for clarity and has been made in the final rule.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

For the reasons stated above, the CCC revises part 1491 of Title 7 of the CFR to read as follows:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

Sec.
1491.1 Applicability.
1491.2 Administration.
1491.3 Definitions.
1491.4 Program requirements.
1491.5 Application procedures.
1491.6 Ranking considerations and proposal selection.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

1491.20 Cooperative agreements.
1491.21 Funding.
1491.22 Conservation easement deeds.

Subpart C—General Administration

1491.30 Violations and remedies.
1491.31 Appeals.
1491.32 Scheme or device.

Authority: 16 U.S.C. 3838h–3838i.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements will be administered under the regulations in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1491.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS will—

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land will not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine eligibility of the land, landowner, State government, local government, Indian Tribe, or nongovernmental organization;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the Commodity Credit Corporation (CCC) with the selected eligible entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS will enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

§ 1491.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

Agricultural uses are defined by the State's FRPP or equivalent, or where no program exists. Agricultural uses should be defined by the State agricultural use tax assessment program. However, if NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect agricultural use and related conservation values.

Certified entity means an eligible entity that NRCS has determined to meet the requirements of § 1491.4(d) of this part.

Chief means the Chief of NRCS or designee.

Commodity Credit Corporation is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. The CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

Conservation easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is developed by NRCS in consultation with the landowner through the local soil conservation district, in consultation with the local committees, established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.

Dedicated fund means an account held by a nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.

Eligible entity means Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to non-agricultural uses of the land.

Eligible land means privately owned land on a farm or ranch that NRCS has determined to meet the requirements of § 1491.4(f) of this part.

Fair market value means the value of a conservation easement as ascertained through standard real property appraisal methods, as established in § 1491.4(g).

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, bio-fuels, and oilseed crops that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, bio-fuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of

agricultural business on the conserved land. The farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers or ranchers.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The Field Office Technical Guide (FOTG) contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest land means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

Forest land of statewide importance means forest land that the State Conservationist, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State, and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by the State Conservationist. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Imminent harm means easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values; for example, those violations that would adversely impact agriculture use, productivity, and related conservation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Land Evaluation and Site Assessment System means the land evaluation system approved by the State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. For additional information *see* the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

Natural Resources Conservation Service means an agency of the Department of Agriculture.

Nongovernmental organization means any organization that:

(1) Is organized for, and at all times since, the formation of the organization, and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) and (2) of that Code, or

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Other interests in land include any right in real property other than easements that are recognized by State law. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland and farm and ranch land of statewide and local importance.

Parcel means a farm or ranch submitted for consideration for funding under this part.

Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by the Secretary.

Purchase price means the appraised fair market value of the easement minus the landowner donation.

Right of enforcement means a vested right set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the grantee, that the Chief, on behalf of the United States, may exercise under specific circumstances in order to enforce the terms of the conservation easement when not enforced by the holder of the easement.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the

Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

§ 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of the CCC, will facilitate and provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting non-agricultural uses of the land. Eligible entities submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the eligible entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements or other interests in land will be in perpetuity unless prohibited by State law. In States that limit the term of the easement or other interest in land, the term of the easement or other interest in land must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be eligible as a certified entity, an Indian Tribe, State, unit of local government, or a nongovernmental organization must be qualified to be an eligible entity and must submit a written request for certification to the Chief at the same time the entity is requesting FRPP cost-share assistance. In order to be certified, an eligible entity must:

(1) Meet the requirements identified in paragraph (c) of this section;

(2) Use or agree to use for FRPP funded acquisitions, the Uniform Standards for Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions in conducting appraisals;

(3) Hold, manage, and monitor a minimum of 25 agricultural land conservation easements, unless the entity requests and receives a waiver of this requirement from the Chief;

(4) Hold, manage, and monitor a minimum of five FRPP or Farmland Protection Program conservation easements;

(5) Have the demonstrated ability to complete acquisition of easements in a timely fashion;

(6) Have the capacity to enforce the provisions of easement deeds;

(7) For nongovernmental organizations, possess a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity;

(8) Be willing to adjust procedures to ensure that the conservation easements acquired meet FRPP purposes and are enforceable; and

(9) Have a plan for administering easements enrolled under this part, as determined by the Chief.

(e) Once NRCS determines that an eligible entity qualifies as a certified entity:

(1) NRCS will enter into a cooperative agreement with the certified entity through which NRCS may obligate funding for up to 5 years. New parcels or prior-year unfunded parcels submitted for funding by certified entities must compete for funding each year. Selected parcels and funding will be added to the existing cooperative agreement using an amendment to the cooperative agreement. Funding expiration dates for the added parcels will be in the amendment to the cooperative agreement;

(2) NRCS will accept applications from certified entities continuously throughout the fiscal year;

(3) Certified entities may elect to close easements without NRCS approving the conservation easement deeds, titles, or appraisals before closing;

(4) Certified entities will prepare the conservation easement deeds, titles, and appraisals according to NRCS requirements as identified in the cooperative agreement;

(5) NRCS will conduct quality assurance reviews of a percentage of the conservation easement transactions submitted by the certified entity for payment. The review will include whether the deed, title review, or appraisals were conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity; and

(6) If a certified entity closes on the easement without a pre-closing NRCS review, and the conservation easement deed, title, or appraisal fails the NRCS quality assurance review, NRCS will provide the certified entity an opportunity to correct the errors. If the certified entity fails to correct the errors to NRCS satisfaction, NRCS may consider decertification of the entity in accordance with paragraph (f) of this section.

(f) *Review and decertification of the certified entity.* (1) The Chief will conduct a review of the certified entity a minimum of once every 3 years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief will:

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If the State Conservationist has determined the certified entity does not meet the criteria established in § 1491.4(d) after the 180 days, the State Conservationist will send, by certified mail, return receipt requested, written notice of proposed decertification of the entity's certification status or eligibility for future FRPP funding. This notice will contain what actions have not been completed to retain certification status, what actions the entity must take to request certification status, the status of funds in the cooperative agreement, and the eligibility of the entity to apply for future FRPP funds. The entity may

contest the Notice of Decertification in writing to the State Conservationist within 20 calendar days of receipt of the notice of proposed decertification.

(3) The period of decertification may not exceed 3 years in duration, with duration of decertification based upon the seriousness of the facts; and

(4) The entity may be recertified upon application to NRCS, after the decertification period has expired, and when the entity has met the requirements as outlined under § 1491.4(d).

(g) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, statewide, or locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pastureland, or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pastureland, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before closing, unless the Chief has reviewed and approved an alternative means by which the forest land's contribution to the economic viability of the land has been demonstrated;

(6) NRCS will not provide FRPP funds for the purchase of an easement or other interest in land on land owned in fee title by an agency of the United States, a State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in part 1400 of this title;

(8) Must possess suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program. Unsuitable conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant and may be offered for participation in the program. However, if an applicant submits an offer for an easement project, the Department of Agriculture (USDA) will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(h) Prior to closing, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions, as selected by the eligible entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality assurance purposes. Entities must provide a copy of the appraisal to NRCS.

(i) The landowner will be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985 (1985 Act), as amended and 7 CFR part 12.

(j) The entity may substitute acres within a pending offer. Substituted acres must not decrease the value of the offered easement or the value of the parcel in meeting program purposes. With the State Conservationist's approval, a cooperating entity may substitute pending offers within their cooperative agreement. The landowner and parcel must meet eligibility criteria as described in § 1491.4(e). The State Conservationist may require re-ranking of substituted acres and substituted parcels.

§ 1491.5 Application procedures.

(a) An Indian Tribe, State, unit of local government, or a nongovernmental organization will submit an application to the State Conservationist in the State where parcels are located.

(b) The State Conservationist will determine whether the Indian Tribe, State, unit of local government, or a nongovernmental organization is eligible to participate in FRPP based on the criteria set forth in § 1491.4(c).

(c) The Chief will determine whether an eligible entity is a certified entity based on the criteria set forth in § 1491.4(d), information provided by the application, and data in the national FRPP database.

(d) The State Conservationist will notify each Indian Tribe, State, unit of local government, or a nongovernmental organization if it has been determined eligible, certified, or ineligible.

(e) Eligible entities with cooperative agreements entered into after the effective date of this part will not have to resubmit an annual application for the duration of the cooperative agreement. Entities may reapply for eligibility when their cooperative agreements expire.

(f) Throughout the fiscal year, eligible entities may submit to the appropriate State Conservationist applications for parcels, in that State, with supporting information to be scored, ranked, and considered for funding.

(g) At the end of each fiscal year, the lists of pending, unfunded parcels will be cancelled unless the eligible entity requests that specific parcels be considered for funding in the next fiscal year. Entities must submit a new list of parcels each fiscal year in order to be considered for funding unless they request that parcels from the previous fiscal year be considered.

§ 1491.6 Ranking considerations and proposal selection.

(a) Before the State Conservationist can score and rank the parcels for funding, the eligibility of the landowner and the land must be assessed.

(b) The State Conservationist will use national and State criteria to score and rank parcels. The national ranking criteria will be established by the Chief, and the State criteria will be determined by the State Conservationist, with advice from the State Technical Committee. The national criteria will comprise at least half of the ranking system score.

(c) At least 30 days before the ranking of parcels, the State Conservationist will announce the date on which ranking of parcels will occur. A State Conservationist may announce more than one date of ranking in a fiscal year.

(d) All parcels submitted throughout the fiscal year will be scored. All parcels

will be ranked together in accordance with the national and State ranking criteria before parcels are selected for funding.

(e) The parcels selected for funding will be listed on the agreements of the entities that submitted the parcels, and the agreements will be signed by the State Conservationist and the eligible entity. Funds for each fiscal year's parcels will be obligated with a new signature each year on an amendment to the agreement. Parcels funded on each fiscal year's amendment will have a separate deadline for closing and requesting reimbursement.

(f) The national ranking criteria are:

(1) Percent of prime, unique, and important farmland in the parcel to be protected;

(2) Percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Proximity of the parcel to other protected land, such as military installations, land owned in fee title by the United States or an Indian Tribe, State government or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use;

(8) Proximity of the parcel to other agricultural operations and infrastructure; and

(9) Other additional criteria as determined by the Chief.

(g) State or local criteria as determined by the State Conservationist, with advice of the State Technical Committee, may include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The performance of an eligible entity's experience in managing and enforcing easements. Performance must be measured by the closing efficiency or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported. The number of years of an eligible entity's existence, budget, or staffing level will not be used as a ranking factor;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, and environmental benefits;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the Land Evaluation and Site Assessment system. This score serves as a measure of agricultural viability (access to markets and infrastructure); and

(7) Existence of a farm or ranch succession plan or similar plan established to encourage farm viability for future generations.

(h) State ranking criteria will be developed on a State-by-State basis. The State Conservationist will make available a full listing of applicable national and State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of the CCC, will enter into a cooperative agreement with entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary FRPP requirements. The cooperative agreement must address:

(1) The interests in land to be acquired, including the United States' right of enforcement, as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with FRPP funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with FRPP funds;

(5) The allowance of parcel substitution upon mutual agreement of the parties; and

(6) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(b) The term of cooperative agreements will be 5 years for certified entities and 3 years for other eligible entities.

(c) The cooperative agreement will include an attachment listing the parcels accepted by the State Conservationist. This list will include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information. The cooperative agreement template will be made available by the State Conservationist.

(d) The cooperative agreement will incorporate the provisions necessary for the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

§ 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the eligible entity, will determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement consistent with § 1491.4(g). An eligible entity will share in the cost of purchasing a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The eligible entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(f) NRCS will conduct its technical and administrative review of appraisals and its hazardous materials reviews with FRPP funds.

(g) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist will not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(h) Environmental Services Credits:

(1) NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement;

(2) NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part; and

(3) If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement will require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum allowed under State law.

(c) The eligible entity may use its own terms and conditions in the conservation easement deed, but the conservation easement deed must be reviewed and approved by National Headquarters in advance of use. Individual conservation easement deeds used by the eligible entity will be submitted to National Headquarters at least 90 days before the planned closing date. Eligible entities with multiple parcels in a cooperative agreement may submit a conservation easement deed template for review and approval. The deed templates must be reviewed and approved by National Headquarters in advance of use. For eligible entities that have not been certified, the NRCS State offices will review prior to closing the conservation easement deeds for individual parcels to ensure that they contain the same language as approved by the national office and that the appropriate site-specific information has been included. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States. The Chief may exercise the option to promulgate standard minimum conservation deed requirements as a condition for receiving FRPP funds.

(d) The conveyance document must include a right of enforcement clause. NRCS will specify the terms for the right of enforcement clause to read as set forth in the FRPP cooperative agreement. This right is a vested property right and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the FOTG. NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the 1985 Act, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) NRCS will sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation will be provided to NRCS by the eligible entity.

(i) Impervious surfaces will not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. The State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces. Before waiving the 2 percent limitation, the State Conservationist must consider, at a minimum, population density, the ratio of open prime other important farmland versus impervious surfaces on the easement area, the impact to water quality concerns in the area, the type of agricultural operation, and parcel size. Eligible entities may submit an impervious surface limitation waiver process to the State Conservationist for review and consideration. The eligible entities must apply approved impervious surface limitation waiver processes on a parcel-by-parcel basis. State Conservationists will not approve blanket waivers of the impervious surface limitation for all parcels administered by the eligible entity without regard for the characteristics of individual parcels. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part. The conservation easement deed must require that NRCS approve any substantive amendment.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the easement terms, the eligible entity will notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the conservation easement as determined by the Chief, the Chief or his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States will be entitled to recover any and all administrative and legal costs from the participating eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The CCC's share will be in proportion to its percentage of original investment.

(f) In the event NRCS determines it must exercise its rights identified under a conservation easement or other

interest in land, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

(a) If it is determined by NRCS that a eligible entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such an eligible entity during the applicable period may be withheld or be required to be refunded, with interest, as determined appropriate by NRCS on behalf of the CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, and depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

Signed this 11th day of January, 2011 in Washington, DC.

Dave White,

Vice-President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2011–1212 Filed 1–21–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. APHIS–2006–0074]

RIN 0579–AC36

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. We are also adding restrictions concerning importation of live poultry and birds that have been vaccinated for certain types of avian influenza, or that have moved through regions where any subtype of highly pathogenic avian influenza is considered to exist. These restrictions supplement or replace existing restrictions on the importation of live birds and poultry, and bird and poultry products and byproducts from regions where exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 are considered to exist. They are necessary to prevent the introduction of highly pathogenic avian influenza into the United States.

DATES: This interim rule is effective on January 24, 2011. We will consider all comments that we receive on or before March 25, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0074* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2006–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0074.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff Veterinarian, National Center for Import and Export, Animal Health Policy and Programs, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulations in title 9 of the Code of Federal Regulations (CFR), parts 93, 94, and 95 (referred to below as the regulations), govern the importation into the United States of specified animals and animal products and byproducts to prevent the introduction of various animal diseases, including exotic Newcastle disease (END) and highly pathogenic avian influenza subtype H5N1.

END is a contagious disease of birds and poultry caused by a paramyxovirus. END is one of most infectious diseases of poultry in the world. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can also infect and cause death even in vaccinated birds and poultry.

Avian influenza is caused by a orthomyxovirus, the same family that includes viruses that cause human influenza. Worldwide, there are many strains of avian influenza (AI) virus that can cause varying amounts of clinical illness in birds and poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese and guinea fowl, as well as a wide variety of other birds. Migratory waterfowl have proved to be a natural reservoir for the less virulent strains of the disease known as low-pathogenicity avian influenza.

Classification of AI viruses is based on both biological and molecular characteristics of the virus. AI viruses are identified by a combination of two groups of surface proteins; the hemagglutinin or H proteins and the neuraminidase or N proteins. AI viruses also are characterized as low pathogenic (LP) or highly pathogenic (HP) by their ability to produce disease or by molecular characteristics. The ability to cause clinical signs may depend on the species of bird infected and may change over time, becoming more or less

pathogenic. Highly pathogenic avian influenza (HPAI) is an extremely infectious and potentially fatal form of the disease in birds and poultry that, once established, can spread rapidly from flock to flock.

In general, AI viruses of H5 and H7 subtypes are considered to be of greatest concern. The H5N1 subtype of HPAI (referred to below as HPAI subtype H5N1) that has caused outbreaks in birds and poultry in Asia, Africa, Europe, and other foreign regions has never been found in the United States. Other forms of HPAI have been detected in 1924, 1983 and 2004 in domestic poultry in this country. The 2004 outbreak was confined to a single flock and rapidly eradicated. There were no human illnesses reported in connection with these outbreaks; however, HPAI subtype H5N1 has caused human illness and death in other countries where people have handled or been in close contact with infected birds or poultry.

Live Birds and Poultry

The regulations in part 93, subparts A and B, require that most birds and poultry imported into the United States be accompanied by a permit and health certificate and be quarantined upon arrival for a minimum of 30 days to ensure the birds' or poultry's freedom from END, HPAI subtype H5N1, and other communicable diseases, including other subtypes of HPAI. Pet birds of U.S. origin that are returning to the United States and that have not been in any region where HPAI subtype H5N1 exists have been exempt from quarantine if they have been outside the country for less than 60 days. Such pet birds have been allowed to be maintained in confinement at the owner's residence, rather than in a USDA quarantine facility, if they have been outside the country for 60 days or more. Any U.S. origin pet birds or performing or theatrical birds or poultry that are returning to the United States and that have been in any region where HPAI subtype H5N1 exists have been required to undergo quarantine in a USDA facility, and may only be imported through certain ports (Los Angeles, CA, Miami, FL, or New York, NY). The regulations have also prohibited the importation of birds that have been vaccinated against Newcastle virus. While the regulations do not explicitly prohibit the importation of live birds or poultry from countries where END or HPAI is considered to exist, APHIS has been effectively prohibiting such imports by denying import permits under § 93.103(a)(2)(i) and § 93.204(a)(2), which allow a permit to be denied based on communicable disease conditions in the area or region of origin.

Changes Affecting the Importation of Live Birds and Poultry

This interim rule makes several changes to the requirements for importing live birds and poultry to improve protection against the introduction of all subtypes of HPAI.

First, we are prohibiting the entry of live birds or poultry that have been vaccinated for any H5 or H7 subtype of avian influenza. The prohibition will also apply to hatching eggs [1] that were laid by birds or poultry vaccinated for the H5 or H7 subtypes of avian influenza. The current prohibition in the regulations applies only to birds (including hatching eggs) that have been vaccinated for Newcastle disease.

The changes we are making are based on our emergency preparedness plans for HPAI and the experience we gained following the 2004 outbreak of H5N2 in Gonzales County, TX. The preparedness plan is based on the best available science and developed in consultation with academic and industry experts. We have adopted a policy that reserves the use of H5 or H7 AI vaccines for control of HPAI outbreaks with the intent to implement vaccination on a strategic basis and under the supervision or control of USDA as part of an official USDA animal disease control program.

The regulations in § 93.106 and § 93.209 require that birds and poultry be quarantined in an approved facility for at least 30 days after importation into the United States and tested during quarantine for communicable diseases of poultry. Such testing now includes testing for all subtypes of avian influenza. Vaccination for H5 or H7 strains of avian influenza could mask the presence of infection in imported birds, and vaccinated birds would have antibodies to H5 or H7 that would be detected during quarantine or routine surveillance, resulting in the birds being handled as if they were infected.

Therefore, we are adding two new requirements addressing vaccination to Subpart A—Birds and Subpart B—Poultry in part 93. There is currently a statement in paragraph (b)(4) of § 93.104, "Certificate for pet birds, commercial birds, zoological birds, and research birds," that requires that the certificate accompanying such birds state that "the birds have not been vaccinated with Newcastle disease vaccine." We are removing the requirement that birds are not vaccinated against Newcastle virus because it is standard practice in the United States. We are changing that required statement to "the birds have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." We are also changing the similar statement contained in the parallel certificate requirement for ratites in § 93.104(c)(5) to read "the ratites have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." We are also adding a statement to § 93.205, "Certificate for poultry," to read "The certificate shall also state that the poultry have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." A complementary sentence is added to § 93.205(b) addressing poultry hatching eggs, requiring that the certificate accompanying them to state that "the hatching eggs are from poultry that have not been vaccinated with a vaccine for any H5 or H7 subtype of avian influenza." These new certificate statement requirements are expected to add a recordkeeping burden of about 30 minutes for each of the approximately 718 certificates obtained each year, or a total burden of about 358 hours. These changes will effectively prohibit the importation of any live birds or live poultry that have been vaccinated for any H5 or H7 subtype of avian influenza, including hatching eggs from such birds.

Second, we are prohibiting the importation into the United States of live birds or poultry that transit regions where HPAI of any subtype is considered to exist. Live birds and poultry cannot be kept in completely sealed containers or otherwise protected from contamination during shipment to the United States. The World Organization for Animal Health (the OIE) has found that secondary spread of avian influenza viruses is mainly by mechanical transfer of infective faeces, in which virus may be present at high concentrations and may survive for considerable periods and that the virus may be spread by birds or other animals that are not themselves susceptible to infection that become contaminated through contact with infected birds in transit.[2] Water or feed present during transit may also become contaminated. In some cases caretakers, farm owners and staff, and trucks and drivers moving birds or delivering food have been implicated in the spread of virus. Consequently, there are significant risks

[1] Hatching eggs are eggs intended and used for hatching, and do not include embryonated eggs for consumption, such as balut eggs.

[2] *See, e.g.,* World Organization for Animal Health, Draft Report of the Meeting of the OIE Ad Hoc Group on Avian Influenza, Paris, 12–14 November 2003.

of live birds or poultry contracting HPAI if allowed to move through regions where HPAI is considered to exist en route to the United States.

We are making this change in § 93.104, "Certificate for pet birds, commercial birds, zoological birds, and research birds," which describes the certificate requirements for live poultry, live birds, and hatching eggs imported into the United States, and in § 93.205, "Certificate for poultry," which describes the certificate requirements for imported live poultry and hatching eggs. We are adding language to paragraphs (b)(6) and (c)(7) of § 93.104, and to paragraphs (a) and (b) of § 93.205 to require that the certificate must state that the live poultry or birds it applies to have not been moved through a region identified in accordance with § 94.6(a) as a region where any form of highly pathogenic avian influenza exists.

Third, we are redescribing the applicability of the requirements in § 93.101(c)(3) and (f)(3) for importing pet and theatrical birds. These paragraphs currently require importation only through certain ports and quarantine for any U.S. origin pet birds or performing or theatrical birds or poultry that are returning to the United States and that have been in any region where HPAI subtype H5N1 exists. This requirement will now apply to such birds that have been in any region where HPAI of any subtype exists. This change is consistent with the other changes in this rule that apply requirements equally whether HPAI subtype H5N1 or other subtypes are involved.

Bird and Poultry Products and Byproducts

Prior to this interim rule, the regulations in part 94, § 94.6, restricted the importation of carcasses, parts of products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds, from regions where END or HPAI subtype H5N1 are considered to exist.

Paragraph (a)(1) of § 94.6 stated that END is considered to exist in all regions of the world except those listed in paragraph (a)(2) of that section. Paragraph (a)(2) listed regions considered to be free of END, based on evaluations by APHIS.

Paragraph (b) of § 94.6 contained requirements for importations from regions where END is considered to exist. Paragraph (b) provided that (except for game birds, which are eligible for importation if eviscerated, with heads and feet removed) carcasses and parts or products of carcasses may be imported only for consignment to an approved establishment, or if they are packed in hermetically sealed containers and cooked by a commercial method after such packing such that they are shelf stable without refrigeration, or if they have been thoroughly cooked. Paragraph (b) also contained provisions for the importation of poultry carcasses or parts or products of carcasses that originate in a region free of END and are then processed in a region where END is considered to exist. Additionally, paragraph (b) contained provisions for the importation under permit of carcasses or parts or products of carcasses of poultry, game birds, or other birds that do not otherwise meet the requirements of paragraph (b), when the Administrator determines that such importation will not constitute a risk of introducing or disseminating END into the United States.

Paragraph (c) of 94.6 contained requirements for importing eggs (other than hatching eggs) from poultry, game birds, or other birds if the birds or poultry were raised in any region where END is considered to exist, if the eggs are imported from any region where END is considered to exist, or if the eggs are moved into or through any region where END is considered to exist at any time before importation or during shipment to the United States. Paragraph (c) provided that the eggs may be imported with a certificate that contains information documenting that the eggs do not present a risk of introducing END; or the eggs may be imported into an approved establishment for breaking and pasteurization; or the eggs may be imported into an approved establishment for scientific, educational, or research purposes. Additionally, paragraph (c) contained provisions for the importation under permit of eggs (other than hatching eggs) that do not otherwise meet the requirements of paragraph (c), when the Administrator determines that such importation will not constitute a risk of introducing END into the United States.

Paragraph (d) of § 94.6 listed regions where HPAI subtype H5N1 is considered to exist. Paragraph (e) of § 94.6 contained requirements for importing unprocessed carcasses and parts or products of unprocessed carcasses of poultry, game birds, or other birds from regions where HPAI subtype H5N1 is considered to exist. Paragraph (e) provided that such unprocessed products could only be imported under permit for scientific, educational, or research purposes and if the Administrator had determined that such importation could be made under conditions that will prevent the introduction of HPAI subtype H5N1. Such conditions are specified in the permit.

Although prior to this interim rule, § 94.6(b) applied only to carcasses and parts or products of carcasses of poultry, game birds, or other birds from regions where END is considered to exist, similar restrictions have been in general use among nations engaged in international trade of poultry products to prevent the introduction of both END and HPAI. Moreover, to date, all foreign regions where HPAI is considered to exist are also regions where END is considered to exist, so the restrictions have been applied *de facto* with regard to both diseases.

However, APHIS expects that, over time, additional regions will be determined to be free from END, and some regions where END was considered to exist may successfully eradicate the disease and then be determined free from END. In such cases, import restrictions based on the presence of END would no longer apply to the regions, and, thus, would no longer protect against HPAI if it exists in the region. There is also a recent apparent increase in HPAI outbreaks worldwide and HPAI may become established in a region where END has never existed, resulting in an increasing threat of introducing HPAI into the United States through imported poultry or poultry products. Although we could take immediate action as outbreaks occur to issue Federal emergency action orders to prohibit the importation of birds and poultry and bird and poultry carcasses, or parts or products of carcasses, from such regions under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), we have determined that we need to establish regulatory safeguards that will be triggered by the discovery of an outbreak of any form of HPAI in commercial birds or poultry in a region, irrespective of whether END exists in the region.

Changes Affecting the Importation of Bird and Poultry Products and Byproducts

This interim rule explicitly applies the END provisions in current § 94.6(b)(3), (b)(4), and (b)(5) that apply to bird and poultry carcasses, and parts or products of carcasses, from regions where END exists to regions where any subtype of HPAI is considered to exist. Paragraphs (b)(3) and (b)(4) of § 94.6 require the products to be cooked in a manner that destroys the HPAI virus. Paragraph (b)(5) addresses products that originate in a region free of END and are

then processed in a region not considered free of the disease. It allows products from free regions to be processed in regions not considered free under conditions designed to prevent contamination of the products.

This interim rule does not apply the END provisions in § 94.6(b)(1) regarding game birds to HPAI regions. This paragraph states that carcasses of game birds may be imported from an END region if eviscerated, with heads and feet removed. We do not believe we have enough information at this time to conclude that this END-based restriction would also control HPAI. As discussed later in this document, we are requesting public comment on this issue. To make it clear that this interim rule paragraph does not allow importation of carcasses of game birds from regions where HPAI exists, it adds the following sentence to § 94.6(b)(1): "Carcasses of game birds may not be imported from regions where HPAI is considered to exist."

In connection with the changes related to HPAI, we are establishing a list of regions where HPAI of any subtype exists. This list is discussed in more detail below under the heading "The Lists of Regions." Note that we are creating a single list of regions where any subtype of HPAI is considered to exist because we are applying the same conditions to importations from regions where HPAI subtype is considered to exist, regardless of the subtype of HPAI.

Processed Carcasses, and Parts or Products of Carcasses

In addition to applying certain requirements in § 94.6(b), "Carcasses, and parts or products of carcasses, from regions where END is considered to exist," to HPAI as well as END, we are making one substantive change, concerning cooking, to these requirements.

Prior to this interim rule, paragraph (b)(4) of § 94.6 required that cooked carcasses, parts, or products of poultry or other birds from END regions "have a thoroughly cooked appearance throughout." In adapting this requirement to apply to both END and HPAI, we are changing the requirement to read that the articles must be "cooked to reach a minimum internal temperature throughout of 74 °C (165 °F)."

To protect against both END and HPAI, cooking must be sufficient to inactivate the viruses in poultry meat that cause these diseases. The former recommendation by the OIE was for cooking that achieves an internal temperature of 70 °C (158 °F) for 5 seconds, but the 2007 Terrestrial Animal Health Code indicates that a standard of 73.9 °C (165 °F) for 0.51 seconds is equally or more effective.[3] Based on this OIE recommendation and the research supporting it, APHIS is applying this revised cooking standard with regard to both HPAI and END. We are rounding the temperature up from 73.9 °C to 74 °C, to make it more practical for commercial treatment situations, and are eliminating the "for 0.51 seconds" part of the standard because experience monitoring such cooking has shown that if the articles reach any given internal temperature, the temperature will endure for more than half a second. The cooking temperature of 74 °C (165 °F) is based on scientific data regarding the temperature required to inactivate both types of viruses, but also includes a small margin of error with regard to END to allow for the wide variety of commercial cooking practices around the world. Although studies indicate that END can be inactivated at a slightly lower temperature than HPAI, approximately 72 °C (162 °F), having a single standard will make the regulations easier to apply and enforce and will ensure that products from regions where either or both diseases exist do not present a risk of introducing either disease. Setting the same temperature requirement with regard to both diseases also reduces the possibility for processing error that could occur if cooking operations needed to frequently switch between, for instance, the former 70 °C (158 °F) OIE standard still used by some countries, a 72 °C (162 °F) requirement for END, and a 74 °C (165 °F) requirement for HPAI.

The cooking temperatures required to inactivate these viruses are a matter of both regulatory and commercial concern. If the standard is set too low, there is a risk that significant amounts of infectious material may survive cooking. If the standard is set unnecessarily high, it increases the cost for producers and may degrade some products. We do not expect the new standard will significantly increase the cost of required cooking. Various scientific studies[4] are underway to further examine the optimal cooking standards to inactivate END or HPAI viruses in products, and APHIS may revisit this standard if new information indicates a need to do so. Therefore, we particularly invite public comment on this issue.

The Lists of Regions

Prior to this interim rule, § 94.6(a)(1) and (a)(2) identified regions where END is considered to exist and regions that are considered to be free of END, respectively.

We are consolidating paragraphs (a)(1) and (a)(2) into a single paragraph (a)(1). We are also taking this opportunity to add to § 94.6(a)(1) a sentence explaining that a region on this list that is removed due to an outbreak of END may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4. This information does not add any new requirements regarding END; it merely refers to another section of the regulations that is relevant to determining a region's disease status.

We are also adding a new paragraph (a)(2) that establishes a list of regions in which HPAI of any subtype is considered to exist. This list will include all regions where we consider HPAI subtype H5N1 to exist: Afghanistan, Albania, Azerbaijan, Bangladesh, Benin, Burkina Faso, Cambodia, Cameroon, China, Djibouti, Egypt, Ghana, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Ivory Coast (Côte d'Ivoire), Japan, Jordan, Kazakhstan, Kuwait, Laos, Malaysia, Myanmar, Nepal, Niger, Nigeria, Pakistan, Palestinian Autonomous Territories, Romania, Russia, Saudi Arabia, South Korea, Sudan, Thailand, Togo, Turkey, Ukraine, and Vietnam. We are removing the list of regions where HPAI subtype H5N1 is considered to exist in § 94.6(d) because it is no longer needed. These changes consolidate into § 94.6(a) all the listings of the disease status of regions for END and HPAI, making § 94.6 easier to follow.

Unlike paragraph (a)(1), which maintains a list of regions in the CFR, new paragraph (a)(2) for HPAI of any subtype will refer to a list that APHIS will maintain on its Web site. Copies of the list will also be available via postal mail, fax, or e-mail upon request to APHIS, Veterinary Services, National Center for Import and Export. Paragraph (a)(2)(ii) describes the procedures for adding regions to and removing regions from the list. The public will have the opportunity to comment on any changes to the list.

The purpose of maintaining the list on the Web site is to maintain the most accurate, up-to-date list possible in a location where affected parties can easily view recent changes. The Web

[3] OIE, Terrestrial Animal Health Code 2007, Appendix 3.6.5, "Guidelines for the Inactivation of the Avian Influenza Virus"; *http://www.oie.int/eng/normes/mcode/code2007/en_chapitre_3.6.5.htm.*

[4] *E.g.,* Thomas, C., King, D.J., Swayne, D.E. 2008. Thermal inactivation of avian influenza and Newcastle disease viruses in chicken meat. Journal of Food Protection. 71(6):1214–1222.

site list should be particularly useful when a new region is added to the list, which occurs immediately after APHIS receives reliable reports of a new outbreak. Changes to lists maintained in the CFR are typically not published until days or even weeks after APHIS determines a region should be added to the list. As discussed in more detail below under the heading "Related Issues on Which APHIS is Seeking Comment," we particularly invite commenters to address whether this approach should also be used not only for the new HPAI list of regions, but also with regard to the END list of regions in § 94.6(a)(1).

A region will be added to the list of regions where HPAI exists when APHIS receives reports of outbreaks of the disease in commercial birds or poultry in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (the OIE). The Administrator of APHIS may also add a region to the list based on outbreak reports he or she receives from other sources the Administrator determines to be reliable; *e.g.,* reports from APHIS inspectors based in foreign countries. This last means of adding regions to the list allows APHIS to take prompt action as soon as it reliably learns of an outbreak, even before reports have been received and referred by the exporting country's animal health agency or the OIE. This is the same basis APHIS has used to remove regions from the list of regions considered free of END, and to add regions to the list of regions where HPAI subtype H5N1 is considered to exist. The principle is the same for all such lists—the lists are changed as soon as APHIS has reliable reports of an outbreak of the relevant disease in the region.

A region will be removed from the list of regions where HPAI is considered to exist only after APHIS completes an evaluation and makes it available for public comment through a notice published in the **Federal Register**. Following the close of the comment period, we will publish another notice responding to comments and announcing APHIS' decision.

In assessing the region's disease status, APHIS takes into consideration our regulations in Part 92, "Importation of Animals and Animal Products: Procedures For Requesting Recognition of Regions," as well as the standards of the OIE for disease-free status and all relevant information obtained from veterinary authorities in the region and through public comments. Additional information about the information APHIS will review can be found on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*.

Prior to this interim rule, the regulations in § 95.30 provided that products and byproducts of poultry, game birds, or other birds from regions where HPAI subtype H5N1 is considered to exist could only be imported under permit and in accordance with conditions specified in the permit to prevent the introduction of HPAI subtype H5N1 into the United States. This section covers feathers, birds' nests, bird trophies, and other products and byproducts not suitable for human consumption, whereas the regulations in part 94 generally cover meat and other products suitable for human consumption. This interim rule applies the regulatory requirements in this section to all subtypes of HPAI.

Approved Establishments

Paragraph (b)(5) of § 94.6 concerns processing of products in foreign regions. A footnote to that paragraph (footnote 5 prior to this interim rule, and renumbered in this interim rule as footnote 7) states that, as a condition of entry into the United States, products must be prepared only in what the footnote calls "approved establishments." Prior to this interim rule, the term "approved establishments" in this footnote referred to establishments approved under the Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 *et seq.*) to prepare food products in accordance with regulations of USDA's Food Safety and Inspection Service (FSIS). To avoid confusion with other uses of the term "approved establishment" in the regulations, we are changing the term that refers to establishments operating under the PPIA to "processing establishment." We believe this change will prevent possible confusion due to the use of the term "approved establishment" in two other paragraphs in § 94.6. In a footnote to § 94.6(b)(2) (footnote 4 prior to this interim rule, and renumbered in this interim rule as footnote 5), the term refers to museums, educational institutions, or other establishments that are approved to receive bird or poultry carcasses for educational purposes. In § 94.6(c)(2), the term refers to establishments that are approved by FSIS for breaking and pasteurization of eggs in a manner that will prevent the spread of disease.

Products

We are consolidating into one paragraph the requirements for carcasses and products with regard to both END and HPAI. Paragraph (b) of § 94.6 is therefore retitled "Carcasses, and parts or products of carcasses, including meat, from regions where END or HPAI is considered to exist." As part of this consolidation we are moving the requirements addressing products from a region where HPAI subtype H5N1 is considered to exist from § 94.6(e) into § 94.6(b)(2), which applies to all subtypes of HPAI. Those requirements state that articles from such regions may only be consigned to certain types of establishments approved by the Administrator, must be accompanied by a permit, and must be moved and handled as specified on the permit. We are also removing § 94.6(e), because the requirements of this paragraph have been incorporated into § 94.6(b)(2).

We are adding the word "meat" in several places in § 94.6 where the text has said only "carcasses and parts or products of carcasses." The phrase "carcasses and parts or products of carcasses" includes meat in its meaning, but adding the word makes that clearer. We are also adding text and footnotes to refer readers to part 95 for regulations covering products not intended for human consumption.

Corresponding Changes in Other Parts of Title 9, Subchapter D

Finally, in conjunction with the changes to § 94.6 discussed above, we are making several changes to parts 93, 94, and 95 that refer to § 94.6. All but three of these changes simply correct references to § 94.6(d)—the former location of the list of regions in which HPAI subtype H5N1 is considered to exist—to instead read "§ 94.6(a)(2)."

One of the remaining changes is to § 93.205, which contains certificate requirements for live poultry and hatching eggs. We are making nonsubstantive changes to § 93.205 to simplify it slightly and divide it into three subordinate paragraphs for ease in reading.

The remaining two changes address requirements in §§ 93.209(b) and 94.26 that have applied to regions where END is considered to exist. These requirements must now apply to regions where either END or HPAI exist. In § 93.209(b), the relevant requirement is that poultry hatching eggs must be quarantined upon arrival in the United States for at least 30 days, unless they are from a region considered free of END and HPAI. Section 94.26 now requires an additional certification statement and other requirements to import live poultry and other products from certain regions that supplement their meat supply from, or have a common land

border with, regions considered to have either END or HPAI.

Related Issues on Which APHIS Is Seeking Comment

There are several additional issues related to HPAI and END for which we are seeking public comment. This interim rule does not make any of the possible changes discussed below, because there are no immediate risks associated with them that would justify immediate action. However, we believe the following changes would improve the effectiveness of our programs to prevent the introduction of HPAI, END, and other poultry diseases.

As discussed above, the new list of regions considered to have HPAI of any subtype will be maintained on the APHIS Web site, not in the CFR. We are also considering listing the regions where END is considered to exist on the Web rather than in the CFR, and we are soliciting public comment on this issue. This change would help us maintain the most accurate, up-to-date list possible in a location where affected parties can easily view recent changes. We would continue to provide an opportunity for public comment on changes to the list. As now, when APHIS determines that a disease is present in a region that presents a potential threat to animal health in the United States, we would take immediate action to restrict imports from that region. However, we would not follow that action with an interim rule in the **Federal Register** (which is necessary to change text in the CFR, where the lists are currently located). Instead, we would list the region on the APHIS Web site, and announce the listing through a notice, rather than a rule, in the **Federal Register**, with an opportunity for public comment. As explained previously with respect to the process for adding or removing a region from the Web list for HPAI, we would consider END to exist in a region when APHIS receives reports of outbreaks of the disease in commercial birds or poultry in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (the OIE), or receives reports of an outbreak from another source that the Administrator determines to be reliable; *e.g.,* APHIS inspectors based in foreign countries.

We would add a region to the list of those considered to be free of END only after completing an evaluation and making it available for public comment. We would do this through a notice in the **Federal Register**. Following the close of the comment period, we would publish another notice responding to comments and announcing APHIS' decision.

In assessing the region's disease status, APHIS would take into consideration the same information it does now—our region recognition standards in part 92, the standards of the OIE for disease-free status, and all relevant information obtained from veterinary authorities in the region and through public comments. Additional information about the factors APHIS reviews to determine a region's END and HPAI statuses may be found on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*.

After evaluating public comments received on this issue in response to this interim rule, we may publish a final rule to establish a Web site list of regions' disease status for END. That final rule would also remove the END list from § 94.6(a)(1). We would at that time also name the regions included in the END Web site list, including any regions that have been added based on reports of END outbreaks since the last time the list was amended in the CFR.

We also seek public comment on whether and how to change paragraph (c) of § 94.6 to address risks associated with importing table eggs from regions where HPAI is considered to exist. Paragraph 94.6(c) addresses importation of eggs (other than hatching eggs, which are regulated by part 93) from regions where END is considered to exist. It currently authorizes four ways such eggs may be imported, one of which is with a certificate stating that the flocks meet certain disease monitoring and testing requirements. These requirements involve placing sentinel birds in the flock and later testing them for END, or alternatively testing the carcasses of any poultry that die in the flock and also testing at least 10 percent of live birds. We are considering adding HPAI to the coverage of this paragraph, and requiring the appropriate tests and flock surveillance for HPAI where such tests and surveillance are already required for END.

This document does not make any changes to § 94.6(c) related to HPAI because APHIS is still considering issues concerning the importation of table eggs from regions where HPAI is considered to exist, and we are soliciting public comment on the issues. In particular, we seek comments on whether a targeted testing program for HPAI in egg flocks in foreign regions is advisable, and how it could be designed to provide a statistically valid testing regimen. Any comments we receive on this subject will be considered if and when APHIS develops a rule on the subject. Those who wish to comment on this issue should also review a final rule APHIS published in the **Federal Register** on April 22, 2009 ("Importation of Table Eggs from Regions Where Exotic Newcastle Disease Exists," Docket No. APHIS–2007–0014; 74 FR 18285–18288). That document changed § 94.6(c) to create a protocol for targeted END testing of a statistically valid sample of dead, dying, and cull birds. We believe it would also be possible to create such a targeted testing program for HPAI, although the sample sizes, type of tests, and other technical details would vary.

We also seek public comment on whether and how the requirements in § 94.6(b)(1) for importing carcasses of game birds from regions where END exists should be changed. This paragraph primarily affects hunters returning to the United States with game birds they have shot. It allows carcasses of game birds to be imported from regions where END exists if they have been eviscerated and the heads and feet removed. The viscera, heads, and feet may not be imported into the United States. We are seeking comment on whether we should apply the same conditions to importation of carcasses of game birds from regions with HPAI. We further seek comment on whether different requirements should apply to carcasses of game birds depending on whether they are imported from a region with HPAI subtype H5N1, or from a region with another subtype of HPAI. In your comments, please address how any such requirement would address the risks of spreading HPAI associated with importing carcasses of game birds.

Immediate Action

This action is necessary to ensure continuing protection against the introduction of HPAI into the United States. All subtypes of HPAI are threats to U.S. poultry industries, and current regulations do not directly address all subtypes of HPAI, relying instead on the overlapped protection afforded by END restrictions. However, continuing rapid changes in world trade patterns make it likely that eventually poultry products may be imported from a region with HPAI but without END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an initial regulatory flexibility analysis that examines the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov). The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

This rule amends the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of live birds and poultry and bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. The rule also adds restrictions concerning importation of live poultry and birds that have been vaccinated for the H5 and H7 subtypes of avian influenza, or that have moved through regions where any subtype of HPAI is considered to exist. These restrictions supplement existing restrictions on the importation of live birds and poultry, and bird and poultry products and byproducts from regions where exotic Newcastle disease or HPAI subtype H5N1 are considered to exist. They are necessary to prevent the introduction of HPAI into the United States.

Because of the current substantial overlap between existing restrictions to prevent the importation of articles that could introduce END and the new restrictions to prevent the importation of articles that could spread HPAI, this rule is not expected to cause significant economic effects. The effects it does have benefit domestic poultry producers and the associated costs should be borne largely by importers of poultry and poultry products.

Based on the domestic production and trade volumes, the interim rule is likely to benefit producers by protecting domestic flocks against the introduction of HPAI, while effects on consumers are expected to be negligible. The costs of complying with the requirements of the rule will largely be borne by persons importing poultry and poultry products into the United States. We do not expect small entities to be significantly affected by the interim rule, other than to benefit from the reduced risk of introduction into the United States of HPAI. Overall, the restrictions placed on imports of birds, poultry, and bird and poultry products will closely follow those already in place for END. The only substantive change will affect certain cooked poultry products with a requirement that cooked poultry carcasses or parts or products of carcasses be heated to a minimum internal temperature of 74 °C (165 °F) before shipment to the United States.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0367 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2006–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0074 and send your comments within 60 days of publication of this rule.

This interim rule affects the importation of birds and poultry and bird and poultry products from regions where any subtype of HPAI is considered to exist. The rule includes information collection activities. In many cases the information collection activities with regard to HPAI are already occurring because the countries involved have END. New information collections will generally occur only when products are imported from a country where HPAI is considered to exist but END is not considered to exist. Such cases should be rare, but when they do occur the information collections are associated with certificates and with recordkeeping required for processing facilities.

In addition, this rule requires an additional statement on the certificate already required by § 93.104 for imported live birds and by § 93.205 for imported live poultry. That certificate must now contain an additional statement that the poultry it applies to have not been moved through a region considered to have any subtype of HPAI. Also, the certificate currently required by § 94.26 to import live poultry and other products from certain regions that supplement their meat supply from, or have a common land border with, regions considered to have END will now also be required for imports from regions considered to have HPAI.

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

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.4986072 hours per response.

Respondents: U.S. importers, owners or operators of establishments that handle restricted or controlled materials, and foreign animal health authorities.

Estimated annual number of respondents: 416.

Estimated annual number of responses per respondent: 1.7259615.

Estimated annual number of responses: 718.

Estimated total annual burden on respondents: 358 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

E-Government Act Compliance

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

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

Accordingly, we are amending 9 CFR parts 93, 94, and 95 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.101 is amended as follows:

■ a. In paragraph (a), by adding a new sentence at the end of the paragraph to read as set forth below.

■ b. In paragraphs (c)(2)(i) introductory text, (c)(2)(ii) introductory text, and (c)(2)(ii)(E)(*2*)(*ii*), by removing the words "subtype H5N1" each time they appear.

■ c. In paragraph (c)(3), by removing the words "listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1" and adding the words "identified in accordance with § 94.6(a)(2) of this subchapter as a region where highly pathogenic avian influenza" in their place.

■ d. In paragraphs (f)(2) introductory text and (f)(2)(iii)(B)(*2*), by removing the words "subtype H5N1" each time they appear.

■ e. In paragraph (f)(3), by removing the words "listed in § 94.6(d) of this subchapter as a region where highly pathogenic avian influenza subtype H5N1" and adding the words "identified in accordance with § 94.6(a)(2) of this subchapter as a region where highly pathogenic avian influenza" in their place.

§ 93.101 General prohibitions; exceptions.

(a) * * * No live birds, and no hatching eggs from birds, shall be imported into the United States if the birds have been vaccinated for the H5 or H7 subtype of avian influenza.

* * * * *

§ 93.104 [Amended]

■ 3. Section 93.104 is amended as follows:

■ a. In paragraph (b)(4), by removing the words "Newcastle disease vaccine" and adding the words "with a vaccine for the H5 or H7 subtype of avian influenza" in their place.

■ b. In paragraph (b)(6), by adding the words ", and that the birds have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists" immediately after the words "exportation of the birds".

■ c. In paragraph (c)(5), by adding the words "or with a vaccine for the H5 or H7 subtype of avian influenza" immediately after the word "vaccine".

■ d. In paragraph (c)(7), by adding the words ", and that the ratites have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where highly pathogenic avian influenza exists" immediately after the word "exportation".

■ 4. Section 93.201 is amended as follows:

■ a. In paragraph (a), by adding a new sentence at the end of the paragraph to read as set forth below.

■ b. In paragraphs (c)(2) and (c)(3), by removing the words "subtype H5N1" each time they appear.

§ 93.201 General prohibitions; exceptions.

(a) * * * No live poultry, and no hatching eggs from poultry, shall be imported into the United States if the poultry have been vaccinated for the H5 or H7 subtype of avian influenza.

* * * * *

■ 5. Section 93.205 is revised to read as follows:

§ 93.205 Certificate for live poultry and hatching eggs.

(a) *Live poultry.* All live poultry, except eggs for hatching, offered for importation from any region of the world shall be accompanied by a certificate stating that such poultry and their flock or flocks of origin were inspected on the premises of origin immediately before the date of movement from such region and that they were then found to be free of evidence of communicable diseases of poultry. The certificate shall also state that, as far as it has been possible to determine, during the 90 days prior to movement, the poultry were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine. The certificate shall also state that the poultry have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza. The certificate shall also state that the poultry have been kept in the region from which they are offered for importation since they were hatched, or for at least 90 days immediately preceding the date of movement, that the poultry have not been moved through a region identified in accordance with § 94.6(a) of this subchapter as a region where any form of highly pathogenic avian influenza exists, and that, as far as it has been possible to determine, no case of European fowl pest (fowl plague) or Newcastle disease occurred on the premises where such poultry were kept, or on adjoining premises, during that 90-day period.

(b) *Hatching eggs.* All eggs for hatching offered for importation from any part of the world shall be accompanied by a certificate stating that the flock or flocks of origin were found upon inspection to be free from evidence of communicable diseases of poultry, the hatching eggs are from poultry that have not been vaccinated with a vaccine for the H5 or H7 subtype of avian influenza and that during the

90 days prior to movement, the flock or flocks of origin were not exposed to communicable diseases of poultry and the premises were not in any area under quarantine.

(c) *Nature of certificate.* The certificate required by this section shall be issued by a salaried veterinary officer of the national government of the region of origin, or if the articles are exported from Mexico, may alternatively be issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so.

§ 93.209 [Amended]

■ 6. In § 93.209, paragraph (b) is amended by removing the words "designated in § 94.6(a)(2) of this subchapter as free of exotic Newcastle disease" and adding the words "designated in § 94.6(a) of this subchapter as free of exotic Newcastle disease and highly pathogenic avian influenza" in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 7. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§§ 94.8, 94.9, 94.12, 94.16, 94.17, 94.18, and 94.24 [Amended]

■ 8. Sections 94.8, 94.9, 94.12, 94.16, 94.17, 94.18, and 94.24 are amended by redesignating footnotes 7 through 20 as footnotes 8 through 21, respectively.

■ 9. Section 94.6 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In paragraph (b), by removing footnotes 4 and 5.

■ c. In paragraph (c), by redesignating footnote 6 as footnote 7.

■ d. By revising paragraphs (a) and (b) to read as set forth below.

■ e. By removing paragraphs (d) and (e) and redesignating paragraph (f) as paragraph (d).

■ f. By revising the OMB citation at the end of the section to read as set forth below.

§ 94.6 Carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease or highly pathogenic avian influenza is considered to exist.

(a) *Disease status of regions for exotic Newcastle disease (END) and highly pathogenic avian influenza (HPAI).*

(1) *Regions in which END is not considered to exist.* (i) END is considered to exist in all the regions of the world except the following: Argentina, Australia, Canada, Chile, Costa Rica, Denmark, Fiji, Finland, France, Great Britain (England, Scotland, Wales, and the Isle of Man), Greece, Iceland, Luxembourg, Mexico (States of Campeche, Quintana Roo, and Yucatan), New Zealand, Republic of Ireland, Spain, Sweden, and Switzerland. APHIS has evaluated these regions for the presence of END. Regions not listed may have END, or may not have been evaluated for END status.

(ii) APHIS will remove a region from the list in paragraph (a)(1)(i) of this section upon determining that END exists there based on reports APHIS receives of outbreaks of the disease in commercial birds or poultry from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will add a region to this list after it conducts an evaluation of the region and finds that END is not likely to be present in its commercial bird or poultry populations. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

(2) *Regions in which HPAI is considered to exist.* (i) A list of such regions is maintained on the APHIS National Center for Import and Export Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or e-mail upon request to Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will consider a region to have HPAI and add it to this list referenced in paragraph (a)(2)(i) of this section upon determining that HPAI exists in commercial birds or poultry in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the OIE, or from other sources the Administrator determines to be reliable. APHIS will remove a region from this list only after it conducts an evaluation of the region and finds that HPAI is not likely to be present in its commercial bird or poultry populations.

(b) *Carcasses, and parts or products of carcasses, including meat, from regions where END or HPAI is considered to exist.* This paragraph applies to carcasses, and parts or products of carcasses,[4] including meat, of poultry, game birds, or other birds that were raised or slaughtered in any region where END or any subtype of HPAI is considered to exist (*see* paragraph (a) of this section); are imported from any such region; or are moved into or through any such region at any time before importation or during shipment to the United States.

(1) Carcasses of game birds, if eviscerated with heads and feet removed, may be imported from regions where END is considered to exist. Carcasses of game birds may not be imported from regions where any subtype of HPAI is considered to exist. Viscera, heads, and feet removed from game birds in any of these regions are ineligible for entry into the United States.

(2) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds may be imported for consignment to any museum, educational institution or other establishment which has provided the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect such articles so as to prevent the introduction or dissemination of END or HPAI into the United States, and which is approved by the Administrator.[5]

(3) Carcasses, or parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if packed in hermetically sealed containers and if cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration.

(4) Carcasses and parts or products of carcasses, including meat, of poultry, game birds, or other birds, may be imported if they are accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in

[4] Animal byproducts are regulated under part 95 of this subchapter.

[5] The names and addresses of approved establishments may be obtained from, and requests for approval may be made to the National Center for Import-Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, Maryland 20737–1231.

the region and that specifies that the articles were cooked throughout to reach a minimum internal temperature of 74 °C (165 °F).

(5) Carcasses, and parts or products of carcasses, including meat, of poultry, game birds, or other birds, that originated in a region considered to be free of END and any subtype of HPAI, and that are processed (cut, packaged, or other processing) in a region where END or HPAI is considered to exist, may be imported under the following conditions:

(i) *Shipment to processing establishments.* All poultry, game bird, or other bird products from such regions shall be shipped from the END and HPAI-free region where they originated to a processing establishment [6] in the region where END or HPAI is considered to exist in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the region and that specifies the products' region of origin, the processing establishment to which the carcasses or parts or products are consigned, and the numbers of the seals applied to the shipping containers.

(A) The poultry, game bird, or other bird carcasses or parts or products may be removed from containers at the processing establishment in the region where END or HPAI is considered to exist only after an official of the national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(B) [*Reserved*]

(ii) *Handling of poultry, game bird, or other bird carcasses or parts or products.* Establishments in regions where END or HPAI is considered to exist that process poultry, game bird, or other bird carcasses or parts or products for export to the United States:

(A) May not receive or handle any live poultry or birds.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process carcasses or parts or products that originate in any region, provided that:

(*1*) All areas, utensils, and equipment likely to contact the carcasses or parts or products to be processed, including skinning, deboning, cutting, and packing areas, are cleaned and disinfected between processing carcasses or parts or products from regions where END or HPAI is considered to exist and processing those from END and HPAI-free regions.

(*2*) Carcasses or parts or products intended for export to the United States are not handled, cut, or otherwise processed at the same time as any carcasses or parts or products not eligible for export to the United States.

(*3*) Carcasses or parts or products intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any carcasses or parts or products not eligible for export to the United States.

(*4*) Carcasses or parts or products are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry, game bird, or other bird carcasses or parts or products to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where articles were processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

(6) Poultry, game bird, or other bird carcasses or parts or products that do not otherwise qualify for importation under paragraphs (b)(1) through (5) of this section may be imported only if the importer applies to, and is granted a permit by, the Administrator, authorizing such importation. A permit will be given only when the Administrator determines that such importation will not constitute a risk of introduction or dissemination of END or HPAI into the United States. Application for a permit may be made in accordance with paragraph (d) of this section.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0245, 0579–0328, and 0579–0367)

§ 94.9 [Amended]

■ 10. Section 94.9 is amended by revising newly redesignated footnote 12 to paragraph (e)(2) introductory text to read "[12] See footnote 9."

§ 94.12 [Amended]

■ 11. Section 94.12 is amended by revising newly redesignated footnote 14 to paragraph (b)(3) to read "[14] See footnote 11."

§ 94.17 [Amended]

■ 12. Section 94.17 is amended by revising newly redesignated footnote 17 to paragraph (p)(1) introductory text to read "[17] See footnote 16."

§ 94.26 [Amended]

■ 13. Section 94.26 is amended as follows:

■ a. In the introductory text, by removing the citation "§ 94.6(a)(2)" and adding the citation "§ 94.6(a)(1)" in its place.

■ b. In paragraph (b) introductory text, (c)(1), and (c)(4), by removing the words "§ 94.6 as free of END" each time they appear and adding the words "§ 94.6(a) as free of END and highly pathogenic avian influenza" in their place.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 14. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 95.30 [Amended]

■ 15. Section 95.30 is amended as follows:

■ a. In the section heading and paragraph (a), by removing the words "subtype H5N1" each time they appear.

[6] As a condition of entry into the United States, poultry species and poultry products addressed by the Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR, chapter III, part 381), must also meet all of the requirements of the PPIA and part 381, including requirements that the poultry or poultry products be prepared only in establishments approved by FSIS. Species subject to these requirements include chickens, turkeys, ducks, geese, guineas, ratites, or squabs.

■ b. In paragraph (a), by removing the words "listed in § 94.6(d)" and adding the words "identified in accordance with § 94.6(a)(2)" in their place.

Done in Washington, DC this 12th day of January 2011.

Edward M. Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2011–1289 Filed 1–21–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0054; Directorate Identifier 2010–CE–070–AD; Amendment 39–16582; AD 2011–01–53]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD supersedes Emergency AD 2011–01–51, requires an immediate functional test of the fuselage drain holes, and requires sending a report of the results to the FAA. This AD also allows, with noted exceptions, for the return/position of the airplane to a home base, hangar, maintenance facility, *etc.* This AD was prompted by reports of water accumulation in the belly of the fuselage that froze and caused the flight controls to jam. We are issuing this AD to prevent water or fluid from accumulating in the belly of the fuselage and freezing when the aircraft reaches and holds altitudes where the temperature is below the freezing point. This condition could cause the flight controls to jam with consequent loss of control.

DATES: This AD is effective January 24, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–01–53, issued on December 20, 2010, which contained the requirements of this amendment.

We must receive comments on this AD by March 10, 2011.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, is considered the State of Design for PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes. A reported occurrence of the flight controls jamming on a Model PIAGGIO P–180 airplane prompted EASA to issue AD No. 2007–0025, dated February 1, 2007. This prompted the FAA to issue AD 2007–24–15, Amendment 39–15281 (72 FR 67843, December 3, 2007). AD 2007–24–15 requires correcting the fuselage drain system and ensuring that the drain lines of the environmental unit condenser are not clogged.

Since AD 2007–24–15 became effective, we received reports of two additional incidences of water accumulating in the belly of the fuselage that froze and caused the flight controls to jam on Model PIAGGIO P–180 airplanes. These reports prompted us to issue Emergency AD 2011–01–51 on December 18, 2010, to require an immediate functional test of the fuselage drain holes and submitting a report of the results to the FAA. It also allows, with noted exceptions, for the return/position of the airplane to a home base, hangar, maintenance facility, *etc.*

After we issued Emergency AD 2011–01–51, we realized that we inadvertently omitted figure 2 in Appendix 1. This prompted us to supersede Emergency AD 2011–01–51 and issue Emergency AD 2011–01–53.

This condition, if not corrected, could result in water or fluid accumulating in the belly of the fuselage and freezing when the aircraft reaches and holds altitudes where the temperature is below the freezing point, which could cause the flight controls to jam with consequent loss of control.

FAA's Determination

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

AD Requirements

We are superseding Emergency AD 2011–01–51 with a new AD, which was issued as Emergency AD 2011–01–53 on December 20, 2010. This AD retains the actions from Emergency AD 2011–01–51, adds figure 2 to Appendix 1, and corrects other minor typographical errors.

Interim Action

We consider this AD interim action. The FAA is working with EASA and PIAGGIO on this unsafe condition. Due to the nature of the immediate safety of flight situation, the FAA is working this AD concurrently with EASA instead of waiting for EASA, as the State of Design, to issue an AD. Thus, this action is considered unilateral AD action.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because water or fluid accumulating in the belly of the fuselage and freezing could cause the flight controls to jam with consequent loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment.

However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0054 and Directorate Identifier 2010–CE–070–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 102 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
Functional test of the fuselage drain holes.	3 work-hours × $85 per hour = $255.	Not applicable	$255	$26,010

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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, 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):

2011–01–53 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–16582; Docket No. FAA–2011–0054; Directorate Identifier 2010–CE–070–AD.

Effective Date

(a) This AD is effective January 24, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–01–53, issued on December 20, 2010, which contains the requirements of this amendment.

Affected ADs

(b) This AD supersedes Emergency AD 2011–01–51, issued December 18, 2010, which was sent to owners/operators of PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes. AD 2007–24–15, Amendment 39–15281 (72 FR 67843, December 3, 2007) is related to this subject and remains in effect.

Applicability

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes, all serial numbers, certified in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

Unsafe Condition

(e) This AD was prompted by reports of water accumulation in the belly of the fuselage that froze and caused the flight controls to jam. We are issuing this AD to prevent water or fluid from accumulating in the belly of the fuselage and freezing when the aircraft reaches and holds altitudes where the temperature is below the freezing point. This condition could cause the flight controls to jam, which could result in loss of control.

Compliance

(f) Comply with this AD within the compliance times specified.

Inspection and Corrective Actions

(g) Unless already done in compliance with Emergency AD 2011–01–51, before further flight, do the following actions using the instructions in Appendix 1 of this AD.

(1) Remove the central floor panels in the cabin and inspect the fuselage belly; and

(2) Functional test the fuselage drain holes.

Reporting Requirement

(h) Unless already done, within 24 hours after complying with the actions required in paragraph (g) of this AD, fill out the reporting form provided in Appendix 2 of this AD and send to the FAA at the address (facsimile, e-mail) referenced in the Related Information section, paragraph (l) of this AD.

(i) For the 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.

Provision to Return to Home Base

(j) For the actions required in paragraph (g) of this AD, you may return/position the airplane to a home base, hangar, maintenance facility, *etc.,* provided the following are adhered to:

(1) A water drain hole test is done immediately before the repositioning flight and the airplane passes this test. The instructions for this test are included in Appendix 3 of this AD. If the airplane does not pass this test, then the actions of paragraph (g) of this AD must be done without a repositioning flight, unless a special flight permit is granted;

(2) This repositioning flight does not exceed a total of 5 hours time-in-service; and

(3) Use of autopilot is prohibited.

Alternative Methods of Compliance (AMOCs)

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

(2) Accomplishment of Piaggio Service Bulletin (ALERT) No. 80–0234, dated December 20, 2010, in its entirety provides an acceptable level of safety to the actions of this AD and thus is considered an approved AMOC for AD 2011–01–53.

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

Related Information

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

Appendix 1 to AD 2011–01–53

Functional Test of the Fuselage Drain Holes

1. Remove the electrical power (Ref. AMM Chapter 24–00–00).

2. Remove the carpet from the aisle in the passenger compartment: The carpet is installed on the aircraft with Velcro; remove it by hand.

3. Remove the aisle floor panels 231 ALF, 231 FLF, 231 MLF, and 231 QLF (Ref. AMM Chapter 06–00–00).

4. Inspect the fuselage belly for presence of fluid or ice. Inspect the lateral bays through the lightening holes.

a. If fluid is found in the belly, drain it and collect. Take note of the amount of fluid removed from the belly, and in which bay the fluid was trapped.

b. If ice is found in the belly, thaw it, then drain and collect. Take note of the amount of fluid removed from the belly, and in which bay the ice was trapped.

NOTE: BEFORE THAWING THE ICE, PUT A SUITABLE CONTAINER BELOW THE EXTERNAL DRAIN HOLES TO COLLECT THE FLUID.

c. Evaluate the amount of fluid collected:

i. If water is found only in the bottom of the belly (*i.e.,* undrainable within the keel beams), go to step 6. Step 5 does not need to be accomplished at this time.

ii. If water is found in excess of item above (4–c–i), do step 5.

5. Add 6.3 mm draining holes as per attached figure 1 (additional drain holes on keel beam webs) connecting the lateral bays to the center ones or, as alternative, apply Piaggio Aero Industries Service Bulletin 80–0291. Then proceed with step 6.

6. Inspect the fuselage belly for presence of dirt/debris. Take note of dirt/debris found and of its location (which bay).

7. Inspect the fuselage belly for signs of previous fluid pooling (waterlines or similar). Take note of any sign found.

8. Inspect the six (6) flapper valves (two near FR 20, FR 32, and FR 36) to verify if they are clogged, stuck to the fuselage skin, or laying against the skin for their entire length.

a. Clean any clogged flapper valve. Take note of any clogged flapper valve and its position.

b. Carefully free any stuck flapper valve. Take note of any stuck flapper valve and its position.

c. If—after cleaning and repositioning—the rubber flap is still laying against the skin for its entire length, cut off the rubber flap. Replace it at the next A check.

9. Inspect the six (6) external drain holes:

a. Verify if they are clogged. If any drain hole is clogged, clean it.

b. Check for proper dimension (3.2 mm). Rework to nominal dimension any external drain hole that is found undersized. Protect the reworked drain hole by means of Alodyne. Take note of any drain hole found clogged and/or reworked, and its position.

Appendix 1 to AD 2011–01–53 (Continued)

Functional Test of the Fuselage Drain Holes

BILLING CODE 4910–13–P

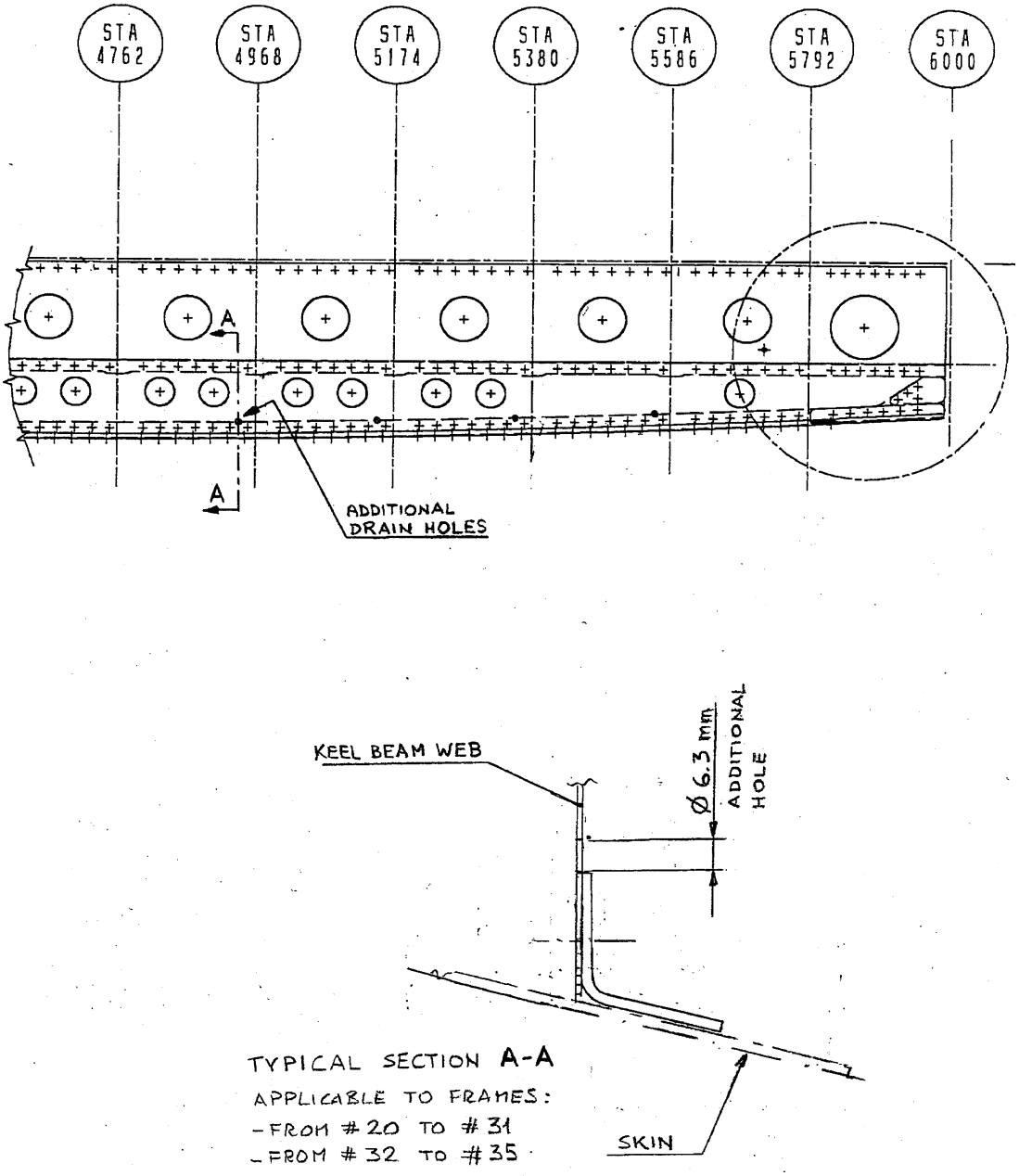


Figure 1. Additional drain holes on keel beam webs

BILLING CODE 4910–13–C

Appendix 1 to AD 2011–01–53 (Continued)

Functional Test of the Fuselage Drain Holes

10. Clean the fuselage belly, removing debris. A vacuum cleaner may be used.

11. If possible, identify clues of potential source of fluid, such as wet carpets, blue lavatory water, *etc.*

12. Test the valves and drain holes as described:

a. Place an adequate amount of water in each bay between FR 19 and FR 36 (*See* figure 2) to verify that the water is conveyed in the central bays and that it is drained. Use at least ½ gallon (approximately 2 liters).

NOTE: TAKE CARE NOT TO COME IN CONTACT WITH ELECTRICAL CONNECTORS WHILE POURING WATER.

b. A steady stream of water should be observed coming from the external drain holes. If not, the flapper valve does not drain properly. Cut off the rubber flap and replace the flapper valve at next A check. Take note of any cut rubber flap and its position.

13. Dry the fuselage belly.

14. Install the aisle floor panels 231ALF, 231 FLF, 231 MLF, and 231 QLF (Ref. AMM Chapter 06–00–00).

15. Re-install the carpet:

a. Make sure that the floor is clean and free of objects.

b. Make sure that the Velcro is well fixed and cleaned.

c. Put the carpet in position on the floor and fix it with the Velcro.

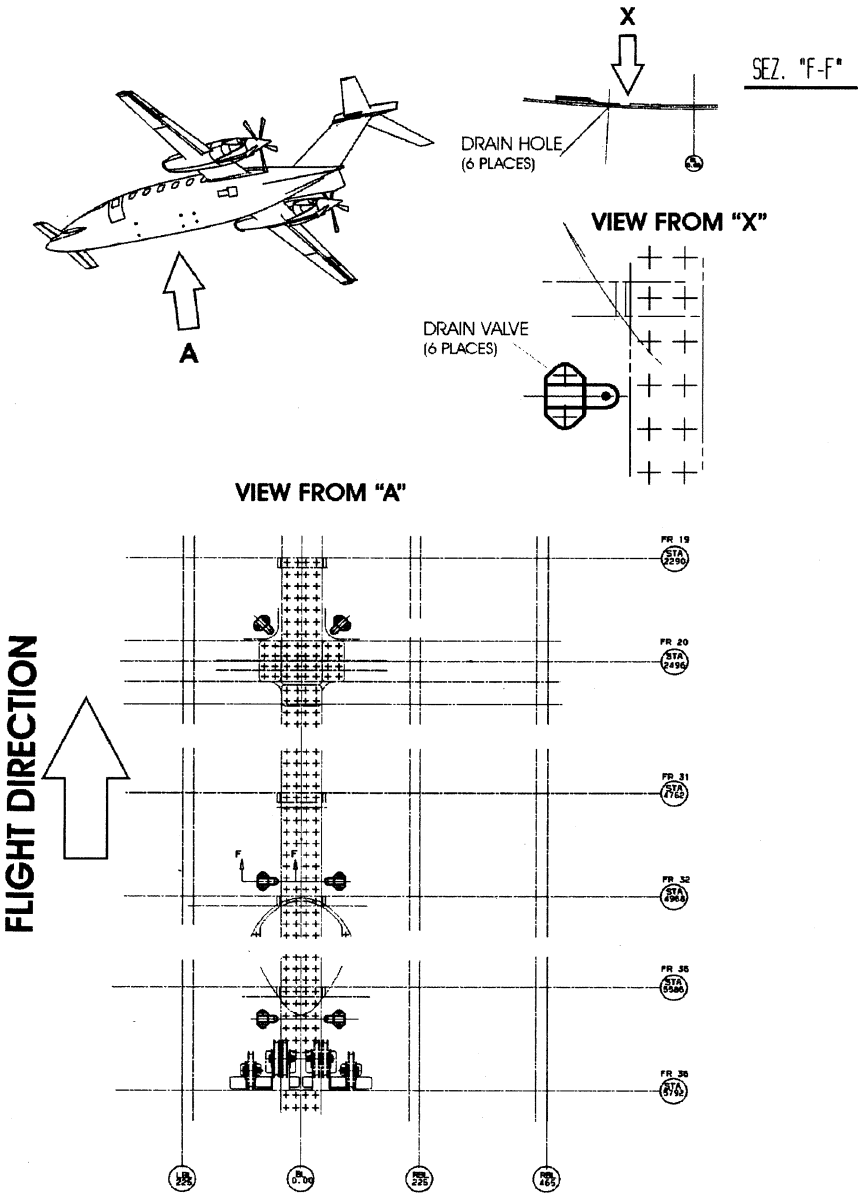
16. Collect information on total time flown in the last 6 months. Specify if the aircraft was exposed to heavy rain conditions while parked or during flights.

17. Make an appropriate entry in the airplane logbook to show compliance with this emergency AD.

BILLING CODE 4910–13–P

Appendix 1 to AD 2011–01–53 (Continued)

Functional Test of the Fuselage Drain Holes



Fuselage Drain Holes

Figure 2. Fuselage Drain Holes

BILLING CODE 4910–13–C

Appendix 2 to AD 2011–01–53 Reporting Form

AIC S/N:	A/C Flight Hours:	A/C Registration:
Step 4a—water collected in the belly [YES] [NO]	If YES, specify amount and location:	
Step 4b—ice collected in the belly [YES] [NO]	If YES, specify amount and location:	

Step 5—added drain holes [YES] [NO]	If YES, specify work performed:
Step 6—debris/dirt in the belly [YES] [NO]	If YES, specify amount and location:
Step 7—signs of previous fluid pooling [YES] [NO]	If YES, specify amount and location:
Step 8—flapper valves inspection	Specify, if any, which flapper valve was found clogged or stuck and, if any, which rubber flap was cut off.
Step 9—drain holes inspection	Specify, if any, which drain hole was found clogged. Specify, if any, which drain hole was found undersized.
Step 11—clues of potential source of fluid.	
Step 12—drain test	Specify, if any, which flapper valve does not have a steady stream of water.
Step 16—Total time flown in the last 6 months. Specify if the aircraft was exposed to heavy rain conditions while parked or during flights.	
Date:	Accomplished by:
Signature	

Send Report to:
Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 901 Locust, Kansas City, MO 64106;
phone: (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@faa.gov.*

Appendix 3 to AD 2011–01–53 Water Drain Hole Test

1. Put a container under the fuselage external drain holes.
2. Insert a plastic or wooden stick (or similar tool), minimum length 3 inches (7.5 cm), diameter 0.1 inch (2.5 mm) in each of the 6 fuselage external drain holes.
3. Verify the stick may enter freely in the drain hole.
4. If the stick does not enter freely, repositioning flight is not allowed.
5. If more than 1 cup (250 ml) of water is drained from 2 drain holes at each station while inserting the stick, repositioning flight is not allowed.

Issued in Kansas City, Missouri, on January 13, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–1136 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30763; Amdt. No. 3408]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 24, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2011.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or
4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 7, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 FEB 2011

Hunstville, AL, Huntsville Intl—Carl T Jones Field, RADAR–1, Amdt 10
Mobile, AL, Mobile Downtown, VOR RWY 14, Amdt 8
Mobile, AL, Mobile Downtown, VOR RWY 18, Amdt 2
Mesa, AZ, Falcon Fld, NDB–A, Amdt 1, CANCELLED
Ontario, CA, Ontario Intl, Takeoff Minimums and Obstacle DP, Amdt 8
San Diego/El Cajon, CA, Gillespie Field, Takeoff Minimums and Obstacle DP, Amdt 5
Gunnison, CO, Gunnison-Crested Butte Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 9, Amdt lA
Chicago/Rockford, IL, Chicago/Rockford Intl, Takeoff Minimums and Obstacle DP, Orig
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 33L, Amdt 10A
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 33R, Amdt 1A
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 35, Amdt lA
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), RNAV (GPS) RWY 9, Orig-B
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), RNAV (GPS) RWY 18 Orig-B
Minneapolis, MN, Crystal, Takeoff Minimums and Obstacle DP, Amdt 3
Rush City MN, Rush City Rgnl, Takeoff Minimums and Obstacle DP, Orig
Kansas City, MO, Charles B. Wheeler Downtown, ILS OR LOC RWY 19, Amdt 22
Elizabethtown, NC, Curtis L Brown Jr Field, NDB RWY 33, Amdt 1, CANCELLED
Las Vegas, NV, Henderson Executive, RNAV (GPS)–B, Amdt 1
Las Vegas, NV, Henderson Executive, VOR–C, Amdt 1
Ontario, OR, Ontario Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Harrisburg, PA, Harrisburg/Capital City, Takeoff Minimums and Obstacle DP, Amdt 4

Indiana, PA, Indiana County-Jimmy Stewart Fld, Takeoff Minimums and Obstacle DP, Amdt 2
Charleston, SC, Charleston Executive, ILS OR LOC RWY 9, Amdt 2
Charleston, SC, Charleston Executive, RNAV (GPS) RWY 9, Amdt 2
Charleston, SC, Charleston Executive, VOR–A, Amdt 1, CANCELLED
Alice, TX, Alice Intl, LOC/DME RWY 31, Orig-B
Alice, TX, Alice Intl, RNAV (GPS) RWY 13, Orig-C
Alice, TX, Alice Intl, RNAV (GPS) RWY 31, Amdt 1C
Alice, TX, Alice Intl, VOR RWY 31, Amdt 13B
Alice, TX, Alice Intl, VOR–A, Amdt 15B
Houston, TX, Ellington Field, ILS or LOC RWY 17R, Amdt 5B
Houston, TX, William P Hobby, ILS OR LOC RWY 12R, Amdt 12A
Taylor, TX, Taylor Muni, VOR/DME RWY 17, Amdt 1A
Appleton, WI, Outagamie County Rgnl, ILS OR LOC RWY 3, Amdt 17B

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Kodiak, AK, Kodiak, KODIAK SIX Graphic DP
Kodiak, AK, Kodiak, Takeoff Minimums and Obstacle DP, Amdt 3
Lake Village, AR, Lake Village Muni, VOR–A, Amdt 8
Lake Village, AR, Lake Village Muni, VOR/DME–B, Amdt 6
Little Rock, AR, Adams Field, RNAV (GPS) RWY 22L, Amdt 1A
Little Rock, AR, Adams Field, RNAV (GPS) RWY 22R, Amdt 1A
Little Rock, AR, Adams Field, RNAV (GPS) RWY 36, Orig-A
Grand Junction, CO, Grand Junction Rgnl, MONUMENT TWO Graphic DP
Middletown, DE, Summit, NDB–A, Amdt 8
Madison, GA, Madison Muni, Takeoff Minimums and Obstacle DP, Orig
Ankeny, IA, Ankeny Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Davenport, IA, Davenport Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Tipton, IA, Mathews Memorial, VOR RWY 11, Amdt 3
Blackfoot, ID, Blackfoot/McCarley Field, Takeoff Minimums and Obstacle DP, Amdt 1
Chicago/Lake in the Hills, IL, Lake in the Hills, Takeoff Minimums and Obstacle DP, Orig
Chicago/Lake in the Hills, IL, Lake in the Hills, VOR RWY 26, Amdt 4
Greenwood/Wonder Lake, IL, Galt Field, Takeoff Minimums and Obstacle DP, Orig
Winchester, IN, Randolph County, Takeoff Minimums and Obstacle DP, Orig
El Dorado, KS, Captain Jack Thomas/El Dorado, Takeoff Minimums and Obstacle DP, Orig
Winfield/Arkansas City, KS, Strother Field, Takeoff Minimums and Obstacle DP, Orig
Minden, LA, Minden, GPS RWY 1, Orig, CANCELLED
Minden, LA, Minden, GPS RWY 19, Orig-B, CANCELLED
Minden, LA, Minden, NDB RWY 1, Amdt 2, CANCELLED
Minden, LA, Minden, NDB RWY 19, Amdt 2, CANCELLED
Minden, LA, Minden, RNAV (GPS) RWY 1, Orig
Minden, LA, Minden, RNAV (GPS) RWY 19, Orig
Minden, LA, Minden, VOR/DME–A Amdt 5
Bar Harbor, ME, Hancock County-Bar Harbor, ILS OR LOC RWY 22, Amdt 6
Bar Harbor, ME, Hancock County-Bar Harbor, LOC/DME BC RWY 4, Amdt 2, CANCELLED
Bar Harbor, ME, Hancock County-Bar Harbor, RNAV (GPS) RWY 4, Amdt 1
Bar Harbor, ME, Hancock County-Bar Harbor, RNAV (GPS) RWY 22, Amdt 1
Troy, MI, Oakland/Troy, Takeoff Minimums and Obstacle DP, Amdt 4
West Branch, MI, West Branch Community, Takeoff Minimums and Obstacle DP, Amdt 3
Cook, MN, Cook Muni, Takeoff Minimums and Obstacle DP, Orig
Duluth, MN, Sky Harbor, RNAV (GPS) RWY 32, Orig, CANCELLED
Duluth, MN, Sky Harbor, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, ILS OR LOC RWY 34, Amdt 2
Minneapolis, MN, Flying Cloud, Takeoff Minimums and Obstacle DP, Amdt 5
Red Wing, MN, Red Wing Rgnl, RNAV (GPS) RWY 27, Amdt 2
St. Paul, MN, St Paul/Lake Elmo, Takeoff Minimums and Obstacle DP, Amdt 1
Minden, NE, Pioneer Village Field, VOR RWY 34, Amdt 1C, CANCELLED
Minden, NE, Pioneer Village Field, VOR–A, Orig
Roswell, NM, Roswell Intl Air Center, ILS OR LOC RWY 21, Amdt 18
Akron, OH, Akron-Canton Rgnl, RNAV (GPS) RWY 23, Orig
Oklahoma City, OK, Will Rogers World, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), Amdt 8F
Sand Springs, OK, William R. Pogue Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Beaver Falls, PA, Beaver County, Takeoff Minimums and Obstacle DP, Amdt 2
Monongahela, PA, Rostraver, Takeoff Minimums and Obstacle DP, Amdt 1
Punxsutawney, PA, Punxsutawney Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Dayton, TN, Mark Anton, Takeoff Minimums and Obstacle DP, Amdt 2
Denton, TX, Denton Muni, GPS RWY 35, Amdt 1A, CANCELLED
Denton, TX, Denton Muni, NDB RWY 18, Amdt 7
Denton, TX, Denton Muni, RNAV (GPS) RWY 18, Orig
Denton, TX, Denton Muni, RNAV (GPS) RWY 36, Orig
Houston, TX, David Wayne Hooks Memorial, RNAV (GPS) RWY 17R, Amdt 1A
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 3, Amdt 2A
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 12R, Amdt 1A
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 21, Amdt 1B
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 30L, Amdt 1A
Waco, TX, Waco Rgnl, GPS RWY 14, Orig, CANCELLED
Waco, TX, Waco Rgnl, GPS RWY 32, Orig, CANCELLED
Waco, TX, Waco Rgnl, RNAV (GPS) RWY 14, Orig
Waco, TX, Waco Rgnl, RNAV (GPS) RWY 32, Orig
Waco, TX, Waco Rgnl, VOR/DME RWY 32, Amdt 15
Yoakum, TX, Yoakum Muni, Takeoff Minimums and Obstacle DP, Orig
Fredericksburg, VA, Shannon, GPS RWY 24, Orig-B, CANCELLED
Fredericksburg, VA, Shannon, NDB RWY 24, Amdt 3
Fredericksburg, VA, Shannon, RNAV (GPS) RWY 24, Orig
Fredericksburg, VA, Shannon, Takeoff Minimums and Obstacle DP, Amdt 1
Moses Lake, WA, Grant Co Intl. RNAV (GPS) Y RWY 4, Amdt 1
Moses Lake, WA, Grant Co Intl. RNAV (GPS) Y RWY 14L, Amdt 1
Moses Lake, WA, Grant Co Intl. RNAV (GPS) Y RWY 22, Amdt 1
Moses Lake, WA, Grant Co Intl. RNAV (GPS) Y RWY 32R, Amdt 2
Moses Lake, WA, Grant Co Intl. RNAV (RNP) Z RWY 4, Orig
Moses Lake, WA, Grant Co Intl. RNAV (RNP) Z RWY 14L, Orig
Moses Lake, WA, Grant Co Intl. RNAV (RNP) Z RWY 22, Orig
Moses Lake, WA, Grant Co Intl. RNAV (RNP) Z RWY 32R, Orig
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 3, Orig
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 7, Orig
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 21, Orig
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 25, Orig
Vancouver, WA, Pearson Field, LDA–A, Amdt 1

Green Bay, WI, Austin Struabel Intl, LOC BC RWY 24, Amdt 19

[FR Doc. 2011–815 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30764; Amdt. No. 3409]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 24, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125); *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 7, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Feb–11	OH	Ashland	Ashland County	0/0448	12/6/10	NDB RWY 19, Amdt 11.
10–Feb–11	OH	Ashland	Ashland County	0/0449	12/6/10	VOR A, Amdt 9.
10–Feb–11	OH	Ashland	Ashland County	0/0450	12/6/10	RNAV (GPS) RWY 19, Orig.
10–Feb–11	IL	Kewanee	Kewanee Muni	0/1242	12/17/10	RNAV (GPS) RWY 27, Orig.
10–Feb–11	IL	Kewanee	Kewanee Muni	0/1243	12/17/10	RNAV (GPS) RWY 19, Orig.
10–Feb–11	IL	Kewanee	Kewanee Muni	0/1245	12/17/10	RNAV (GPS) RWY 9, Orig.
10–Feb–11	LA	Natchitoches	Natchitoches Rgnl	0/1309	12/13/10	LOC RWY 35, Amdt 3E.
10–Feb–11	TX	Weslaco	Mid Valley	0/1310	12/13/10	GPS RWY 13, Orig.
10–Feb–11	NM	Farmington	Four Corners Rgnl	0/1316	12/13/10	ILS OR LOC RWY 25, Amdt 7C.
10–Feb–11	LA	Lake Charles	Chennault Intl	0/1703	12/13/10	RNAV (GPS) RWY 15, Orig.
10–Feb–11	MT	Lewistown	Lewistown Muni	0/1707	12/18/10	Takeoff Minimums and (Obstacle) DP, Amdt 3.
10–Feb–11	LA	Lake Charles	Chennault Intl	0/1731	12/13/10	ILS OR LOC RWY 15, Amdt 5.
10–Feb–11	LA	Bastrop	Morehouse Memorial	0/1929	12/14/10	RNAV (GPS) RWY 16, Amdt 1.
10–Feb–11	LA	Bastrop	Morehouse Memorial	0/1930	12/14/10	RNAV (GPS) RWY 34, Orig.
10–Feb–11	LA	Bastrop	Morehouse Memorial	0/1931	12/14/10	NDB RWY 34, Amdt 6.
10–Feb–11	LA	Bastrop	Morehouse Memorial	0/1932	12/14/10	VOR/DME A, Amdt 9.
10–Feb–11	OH	Toledo	Toledo Express	0/2155	12/20/10	RNAV (GPS) RWY 7, Amdt 1.
10–Feb–11	PA	Quakertown	Quakertown	0/2366	12/27/10	NDB RWY 29, Amdt 10.
10–Feb–11	PA	Quakertown	Quakertown	0/2367	12/27/10	RNAV (GPS) RWY 29, Orig.
10–Feb–11	MO	St Louis	Lambert-St Louis Intl	0/2654	12/23/10	ILS PRM RWY 11 (Sim. Close Parallel), Orig-B; ILS PRM RWY 11 (CAT II) (Sim Close Parallel), Orig-B; ILS PRM RWY 11 (CAT III) (Sim Close Parallel), Orig-B.
10–Feb–11	MO	St Louis	Lambert-St Louis Intl	0/2655	12/23/10	ILS PRM RWY 12L (Sim. Close Parallel), Amdt 1; ILS PRM RWY 12L (CAT II) (Sim Close Parallel), Amdt 1; ILS PRM RWY 12L (CAT III) (Sim Close Parallel), Amdt 1.
10–Feb–11	MO	St Louis	Lambert-St Louis Intl	0/2656	12/23/10	ILS PRM RWY 29 (Sim. Close Parallel), Amdt 1A.
10–Feb–11	MO	St Louis	Lambert-St Louis Intl	0/2657	12/23/10	ILS PRM RWY 30R (Sim. Close Parallel), Amdt 1A; ILS PRM RWY 30R (CAT II) (Sim Close Parallel), Amdt 1A; ILS PRM RWY 30R (CAT III) (Sim Close Parallel), Amdt 1A.
10–Feb–11	MO	St Louis	Lambert-St Louis Intl	0/2660	12/23/10	LDA PRM RWY 30L (Sim. Close Parallel), Amdt 1A.
10–Feb–11	MI	Detroit	Detroit Metropolitan Wayne County.	0/2668	12/23/10	ILS PRM RWY 3R (Sim. Close Parallel), Orig; ILS PRM RWY 3R (CAT II) (Sim. Close Parallel), Orig; ILS PRM RWY 3R (CAT III) (Sim. Close Parallel), Orig.
10–Feb–11	MI	Detroit	Detroit Metropolitan Wayne County.	0/2669	12/23/10	ILS PRM RWY 4R (Sim. Close Parallel), Orig; ILS PRM RWY 4R (CAT II) (Sim. Close Parallel), Orig; ILS PRM RWY 4R (CAT III) (Sim. Close Parallel), Orig.
10–Feb–11	MI	Detroit	Detroit Metropolitan Wayne County.	0/2670	12/23/10	ILS Y PRM RWY 4L (Sim. Close Parallel), Orig-A.
10–Feb–11	MI	Detroit	Detroit Metropolitan Wayne County.	0/2671	12/23/10	ILS Y PRM RWY 22R (Sim. Close Parallel), Orig-A.
10–Feb–11	NE	Hebron	Hebron Muni	0/2696	12/20/10	GPS RWY 12, Orig.
10–Feb–11	NE	Hebron	Hebron Muni	0/2697	12/20/10	NDB RWY 12, Amdt 4.
10–Feb–11	NE	Hebron	Hebron Muni	0/2698	12/20/10	GPS RWY 30, Orig.
10–Feb–11	OH	Cleveland	Cleveland-Hopkins Intl	0/2702	12/23/10	ILS PRM RWY 24R (Sim. Close Parallel), Orig-B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2704	12/23/10	LDA PRM RWY 6R (Sim. Close Parallel), Amdt 1B.
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2707	12/23/10	ILS PRM RWY 6L (Sim. Close Parallel), Orig-C.
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2708	12/23/10	LDA PRM RWY 24L (Sim. Close Parallel), Orig-B.
10–Feb–11 ...	MI	Detroit	Detroit Metropolitan Wayne County.	0/2710	12/23/10	ILS PRM RWY 22L (Sim. Close Parallel), Orig.
10–Feb–11 ...	MI	Detroit	Detroit Metropolitan Wayne County.	0/2711	12/23/10	ILS PRM RWY 21L (Sim. Close Parallel), Orig.
10–Feb–11 ...	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	0/2714	12/23/10	VOR OR TACAN RWY 31, Amdt 26.
10–Feb–11 ...	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	0/2715	12/23/10	ILS OR LOC RWY 13, Amdt 1F.
10–Feb–11 ...	PA	Philadelphia	Philadelphia Intl	0/3257	12/28/10	ILS PRM RWY 27L (Sim. Close Parallel), Amdt 3.
10–Feb–11 ...	PA	Philadelphia	Philadelphia Intl	0/3258	12/28/10	ILS PRM RWY 26 (Sim. Close Parallel), Amdt 3.
10–Feb–11 ...	TX	Pampa	Perry Lefors Field	0/4249	12/6/10	GPS RWY 17, Orig-A.
10–Feb–11 ...	IL	Champaign/Urbana	University of Illinois-Willard ...	0/7104	12/20/10	LOC/DME BC RWY 14L, Amdt 8.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9701	12/13/10	RADAR–1, Amdt 5A.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9702	12/13/10	LOC BC RWY 33, Amdt 19A.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9703	12/13/10	RNAV (GPS) RWY 33, Amdt 1B.

[FR Doc. 2011–816 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 202 and 240

[Release No. 34–63723]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") [1] amended Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"),[2] which governs the handling of proposed rule changes submitted by self-regulatory organizations ("SROs"). Among other things, the Dodd-Frank Act's amendments to Section 19 of the Exchange Act require the Securities and Exchange Commission ("Commission") to promulgate rules setting forth the procedural requirements of proceedings to determine whether a proposed rule change should be disapproved. In satisfaction of this requirement, the Commission is adopting new Rules of Practice to formalize the process it will use when conducting proceedings to determine whether an SRO's proposed rule change should be disapproved under Section 19(b)(2) of the Exchange Act. The new rules are intended to add transparency to the Commission's conduct of those proceedings and address the process the Commission will follow to institute proceedings and provide notice of the grounds for disapproval under consideration as well as provide interested parties with an opportunity to submit written materials to the Commission. In addition, the Commission is making conforming changes to Rule 19b–4 under the Exchange Act in recognition of the new Rules of Practice. Further, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), the provisions of paragraphs (1) through (3) of Section 19(b) of the Exchange Act govern the proposed rules of the Public Company Accounting Oversight Board ("PCAOB").[3] The Commission is amending Regulation P to add a rule providing that these new Rules of Practice also formalize the process the Commission will use when conducting proceedings to determine whether a PCAOB proposed rule should be disapproved.

DATES: *Effective Date:* January 24, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Holley III, Assistant Director, at (202) 551–5614, Kristie Diemer, Special Counsel, at (202) 551–5613, and Arisa Tinaves, Special Counsel, at (202) 551–5676, Division of Trading and Markets, or Jeffrey S. Cohan, Senior Special Counsel, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adding to its Rules of Practice [4] to establish procedures for instituting proceedings to determine whether an SRO's proposed rule change should be disapproved under Section 19(b) of the Exchange Act (§ 201.700 *et seq.*) and is making corresponding changes to Rule 19b–4 under the Exchange Act (15 U.S.C. 78f(b)(4)). The Commission is also adding Rule 170 to Regulation P [5] to provide that § 201.700 *et seq.* establishes procedures for instituting proceedings to determine whether a PCAOB proposed rule should be disapproved.

I. Discussion of Rule Amendments

A. Background

Section 916 of the Dodd-Frank Act amended Section 19(b) of the Exchange Act, which governs the Commission's handling of proposed rule changes submitted by SROs, including national securities exchanges, the Financial Industry Regulatory Authority ("FINRA"), and registered clearing agencies.[6] Notably, the amendments to Section 19(b) in Section 916 of the Dodd-Frank Act established new statutory deadlines applicable to the Commission's publication and review of proposed SRO rule changes.[7]

[1] Public Law 111–203 (July 21, 2010).

[2] 15 U.S.C. 78s(b)(2).

[3] *See* 15 U.S.C. 7217.

[4] 17 CFR 201 *et seq.*

[5] 17 CFR 202.100 *et seq.*

[6] Pursuant to Section 107 of the Sarbanes-Oxley Act, the provisions of paragraphs (1) through (3) of Section 19(b) of the Exchange Act also govern proposed rules of the PCAOB.

[7] Pursuant to Rule 30–3(a) (17 CFR 200.30–3(a)), the Commission has delegated authority to the Division of Trading and Markets for certain functions related to the handling of proposed rule changes filed by SROs under Section 19 of the Exchange Act.

Among other things, amended Section 19(b) imposes a requirement that an SRO's proposed rule change be sent by the Commission to the **Federal Register** for publication within 15 days of the date on which the SRO posted its proposed rule change on its Web site.[8] Further, Section 916(a) of the Dodd-Frank Act amended Section 19(b)(2) of the Exchange Act to require the Commission, within 45 days of the "publication date" of notice of a proposed rule change, to either approve a proposed rule change, disapprove a proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[9] With the exception of the ability to disapprove a proposed rule change without first instituting proceedings, the authority to either approve a proposed rule change or institute proceedings to determine whether a proposed rule change should be disapproved is not new.

In addition, the Dodd-Frank Act removed the concept of "abrogation" of a filing that an SRO designated to be effective immediately upon filing with the Commission. Prior to the Dodd-Frank Act, the Commission had the authority, within 60 days of the date of filing, to summarily abrogate a proposed rule change filed for immediate effectiveness under former Section 19(b)(3)(A) of the Exchange Act[10] if the Commission determined that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[11] Abrogation suspended the effectiveness of an immediately effective proposal and obligated the SRO, if it desired to proceed with its proposed rule change, to refile the proposal for notice, comment, and Commission consideration under Section 19(b)(2) of the Exchange Act. Section 916(c) of the Dodd-Frank Act amended Section 19(b)(3)(C) of the Exchange Act and replaced abrogation with a process in which the Commission may "temporarily suspend" a proposed 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 Exchange Act) and then must institute proceedings under Section 19(b)(2)(B) to determine whether to approve or disapprove the SRO rule change.[12]

Prior to the Dodd-Frank Act's amendments to Section 19, proceedings to determine whether to disapprove a proposed rule change were rarely begun and even more rarely concluded.[13] Rather, an SRO typically modified or withdrew a proposal when it understood the Commission or its staff had concerns that could lead it to institute such proceedings. The Dodd-Frank Act's amendments to Section 19 may increase the number of proceedings that the Commission determines to institute because, among other things, the new authority to "temporarily suspend" an immediately effective filing obligates the Commission to institute proceedings to determine whether to disapprove the SRO rule change with the imposition of the suspension. That provision, together with the new statutory deadlines applicable to Commission review and publication of an SRO's proposed rule change, will further increase the Commission's workload. Consequent constraints on Commission resources would be compounded to the extent that the Commission continues to receive an increasing number of proposed rule changes from an increasing number of SROs.

B. Rule Amendments

As required by Section 19(b)(2)(F) of the Exchange Act (added by Section 916(a) of the Dodd-Frank Act), the Commission is promulgating new Rules of Practice setting forth the procedural requirements for proceedings to determine whether to disapprove an SRO's proposed rule change.[14] Specifically, the Commission is adopting rules to outline the procedures that it will follow when exercising its authority under Section 19(b)(2)(A)(i)(II) of the Exchange Act, pursuant to which the Commission either (1) may institute proceedings to determine whether a proposed rule change filed under Section 19(b)(2) should be disapproved or (2) shall institute such proceedings to determine whether to disapprove an immediately effective proposed rule change filed under Section 19(b)(3)(A) that the Commission determined to temporarily suspend.

The procedural rules that the Commission now is adopting are intended to implement the mandate imposed by the Dodd-Frank Act.[15] The rules also are intended to bring transparency to the conduct of proceedings to disapprove a proposed rule change under Section 19(b) of the Exchange Act and reflect the process that the Commission generally has followed when it has had occasion to conduct such proceedings.[16] Among other things, the new rules outline the process that the Commission will follow to provide to the SRO notice of the grounds for disapproval under consideration.[17]

While the new rules are not within the scope of the existing Rules of Practice, they do incorporate three existing Rules of Practice by reference: Rule 103 (Construction of Rules), 104 (Business Hours), and 160 (Time Computation). Rule 103, among other things, specifies that the Rules of Practice "shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding."[18] It also states that counsel

[8] *See* Section 19(b)(2)(E) of the Exchange Act (15 U.S.C. 78s(b)(2)(E)), as added by Section 916(a) of the Dodd-Frank Act. The 15-day period commences when the SRO, "after filing a proposed rule change with the Commission," posts its proposal on a publicly available Web site. *See id.* Separately, Rule 19b–4(l) under the Exchange Act requires the SRO to post a proposal on its Web site within two business days after filing the proposal with the Commission. *See* 17 CFR 240.19b–4(l). If the Commission fails to send the notice to the **Federal Register** by the applicable deadline, then the "publication date" would be deemed to be the date on which the SRO Web site publication was made. *See* 15 U.S.C. 78s(b)(2)(E).

[9] *See* Exchange Act Section 19(b)(2)(A)(i). The initial 45-day period may be extended by either the Commission or the SRO for up to an additional 45 days to a maximum of 90 days total. *See* 15 U.S.C. 78s(b)(2)(A)(ii). If the Commission subsequently fails to act within the applicable time frame, then the proposed rule change will be "deemed to have been approved." *See* 15 U.S.C. 78s(b)(2)(D).

[10] *See* 15 U.S.C. 78s(b)(3)(A).

[11] *See* former Section 19(b)(3)(C); former 15 U.S.C. 78s(b)(3)(C).

[12] *See* 15 U.S.C. 78s(b)(3)(C). Section 19(b)(3)(C) further provides that a temporary suspension is not reviewable under Exchange Act Section 25 nor is it deemed to be "final agency action."

[13] *See, e.g., infra* note 16 (citing to a 1984 disapproval proceeding order).

[14] *See* 15 U.S.C. 78s(b)(2)(F). Section 19(b)(2)(F) also requires the Commission, as part of its effort to promulgate rules setting forth the procedural requirements for proceedings to determine whether to disapprove an SRO's proposed rule change, to have "consult[ed] with other regulatory agencies." *Id.* In satisfaction of this requirement, Commission staff has consulted with staff from the Commodity Futures Trading Commission, the Federal Reserve Board, and the Office of the Comptroller of the Currency.

[15] Rules 700 and 701 are not affected by the other Rules of Practice contained in part 201, except as specifically provided for in Rule 700. *See* amendment to Rule of Practice 100 ("Scope of the Rules of Practice") adding new subparagraph (b)(3).

[16] *See, e.g.,* Securities Exchange Act Release No. 21439 (October 31, 1984), 49 FR 44577 (November 7, 1984) (File Nos. SR–CBOE–84–15 and SR–CBOE–84–16) (Order Instituting Proceedings to Determine Whether to Disapprove Rule Changes).

[17] Though in a proceeding to determine whether to disapprove a proposed rule change the Commission is required to publish notice of its grounds for disapproval under consideration, the Commission could ultimately either disapprove or approve the proposal following conclusion of the proceedings. *See* Exchange Act Section 19(b)(2)(C); 15 U.S.C. 78s(b)(2)(C) (setting forth the standards applicable to Commission approval or disapproval of a proposed rule change). *See also infra* note 27.

[18] *See* 17 CFR 201.103(a).

for a party may take any action required or permitted to be taken by such party.[19] Rule 104 sets forth the business hours of the Commission, which will be applicable to the filing of papers with the Commission.[20] Rule 160 governs the computation of time periods, which will be applicable when the Commission establishes, for example, deadlines by which comments must be received.[21]

Consistent with Exchange Act Section 19(b)(2)(B), when instituting proceedings to determine whether to disapprove an SRO's proposed rule change, the new rules state that the Commission shall provide notice to the SRO and to the public of the grounds for disapproval under consideration. This notice shall include a brief statement of the matters of fact and law that the Commission is considering in determining whether to disapprove the rule filing.[22] In addition to publication of such notice in the **Federal Register,** the rules provide that the Commission also will serve a copy of the notice to the SRO that filed the proposed rule change.[23]

As reflected in new Rule 700(b)(1), such notice of the grounds for disapproval under consideration may be provided either simultaneously with the initial publication by the Commission of the notice of the SRO's proposed rule change in the **Federal Register,** or it may be published separately in the **Federal Register** subsequent to the initial publication by the Commission of the notice of the SRO's proposed rule change in the **Federal Register.** Providing for publication of the grounds for disapproval under consideration *simultaneous with* the initial publication of the proposed rule change in the **Federal Register** recognizes that a proposed rule change may initially raise questions as to whether the Commission would be able to approve the proposal as consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO. Simultaneous publication will allow the Commission to highlight prominently for public comment issues on which it seeks comment in an efficient manner when the proposal is first noticed for public comment. In addition, it will allow the Commission to proceed without additional delay to act on a proposed rule change in a more efficient manner. Alternatively, providing for publication of the grounds for disapproval under consideration *subsequent to* the initial publication of the proposed rule change in the **Federal Register** recognizes that commenters or the Commission may identify an issue with a proposal after a proposal was published for comment that warrants the institution of proceedings to determine whether to disapprove the proposal. Further, as a consequence of the short timeframe for noticing a proposal that is established in revised Section 19(b) of the Exchange Act, the Commission may be compelled to publish filings that are later found to raise concerns under the Exchange Act, in which case the Commission may decide to institute proceedings subsequent to the initial publication of the proposed rule change in the **Federal Register.**[24]

When instituting proceedings, Section 19(b)(2)(B)(i)(II) of the Exchange Act requires the Commission to provide the SRO with an opportunity for a hearing. Accordingly, new Rule 700(c) outlines the conduct of the proceedings and establishes the opportunity for the SRO that filed the proposed rule change, as well as any other interested parties, to be heard on the matter. Specifically, Rule 700(c) states that all parties, including the SRO, will be given a specified amount of time (as indicated in the notice of the grounds for disapproval) to submit supporting or opposing materials, in writing, for the Commission's consideration in determining whether to approve or disapprove a proposed rule change.[25] In particular, the SRO that submitted the proposed rule change could file a written statement in support of its proposed rule change demonstrating, in specific detail, how such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO.[26] The statement could include a response to each of the grounds for disapproval under consideration as well as any specific representations or undertakings (*e.g.,* representations or undertakings concerning the SRO's plans for surveillance or enforcement of a proposed new trading rule).

At the conclusion of the initial opportunity to submit written materials, the rules provide an opportunity for the SRO whose proposed rule change is under consideration to respond to any comments received on its proposal (*i.e.,* a "rebuttal period").[27] The rules state that any failure by the SRO to respond to comments received on the proposal may result in the Commission not having a sufficient basis to make an affirmative finding as to whether the SRO's proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO.[28]

Further, the new rules state that the Commission may consider any failure by the SRO to provide all of the information required by Form 19b–4 in the manner required by the Form, as well as any failure to explain how the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulation thereunder or any failure by the SRO to provide a complete response to the Commission's grounds for disapproval under consideration, in determining whether to approve or disapprove the

[19] *See* 17 CFR 201.103(c)(3).

[20] *See* 17 CFR 201.104.

[21] *See* 17 CFR 201.160. Among other things, Rule 160 addresses compliance with deadlines that fall on a Saturday, Sunday, or Federal holiday.

[22] As stated in Rule 700(e), the Commission is not required to amend its notice of the grounds for disapproval under consideration to consider additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

[23] Specifically, in addition to **Federal Register** publication, notice will be served to the contact person listed on the cover page of the Form 19b–4 filing filed with the Commission. *See* Rule 700(b)(1)(iii).

[24] As required by Section 19(b)(2)(E) of the Exchange Act (added by Section 916(a) of the Dodd-Frank Act), the Commission must send notice of an SRO's proposed rule change to the **Federal Register** for publication within 15 calendar days of the date on which the SRO posts its proposed rule change on its Web site. Failure to meet the 15 calendar day statutory timeframe results in the "publication date" being deemed to be the day on which the SRO posted its proposal on its Web site. Because the 45-day statutory deadline for Commission action is keyed off of the "publication date," and because failure to act by that deadline results in a proposal being "deemed approved," failure to notice a proposal within 15 calendar days can effectively reduce the time that the Commission and commenters have to fully consider a proposal.

[25] A request for an opportunity for an oral presentation of views should be submitted as a written request to the Secretary of the Commission and should include a reference to the proposed rule change's file number. *See* Exchange Act Rule 19b–4(g). The Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views. *See* Rule 700(c)(2).

[26] Notably, the instructions to Form 19b–4 require an SRO to present, in a clear and comprehensible manner, how every proposed rule change it files with the Commission is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO. These standards are reflected in Rule 700(b)(3).

[27] The Commission will indicate in the notice of the grounds for disapproval the specified amount of time for the rebuttal period. *See* Rule 700(c)(3).

[28] The standard for approval of a proposed rule change is that the Commission "shall approve a proposed rule change * * * if it finds that such proposed rule change is consistent with the requirements of [the Exchange Act] and the rules and regulations issued under [the Exchange Act] that are applicable to [the SRO]." 15 U.S.C. 78s(b)(2)(C)(i). The standard for disapproval is that the Commission "shall disapprove a proposed rule change of [an SRO] if it does not make [such finding]." 15 U.S.C. 78s(b)(2)(C)(ii).

proposed rule change.[29] In particular, such failure may result in the Commission not having a sufficient basis to make an affirmative finding that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO.

After conclusion of the initial comment period and the rebuttal period, the opportunity for interested parties to comment on the proposed rule change would close. Thereafter, the Commission would issue a written order either approving or disapproving the SRO's proposed rule change that sets out the reasons for the Commission's determination.[30]

The new rules also specify the record that the Commission will consider in the context of a proceeding to determine whether to disapprove an SRO's proposed rule change. Specifically, Rule 700(d)(3) states that the Commission will determine the matter on the basis of the record, which shall include the SRO's proposed rule change filed on Form 19b–4, any written materials received from any party on the proposed rule change, and any written materials that reflect communications between the Commission and any interested parties.[31] Further, the rules reflect that written materials shall be filed with the Secretary of the Commission and that all materials received will generally be made publicly available.

Further, the Commission is making conforming edits to Rule 19b–4 in light of new Rules of Practice 700 and 701. In particular, the Commission is removing existing paragraph (g) of that rule, which references the opportunity for interested persons to be heard in the context of a proceeding to determine whether to disapprove a proposed rule change, and is replacing it with a cross reference to new Rules of Practice 700–701.[32] In addition, the Commission is amending paragraph (*l*) of Rule 19b–4 concerning the obligation of an SRO to post and maintain a copy of each proposed rule change on its Web site to provide specific guidance to the SRO as to when to remove a proposed rule change that is disapproved by the Commission. Currently, Rule 19b–4(*l*) does not specifically reference a Commission disapproval order as one of the potential final actions on a proposal.

Finally, the Commission is adding Rule 170 to Regulation P[33] to provide that § 201.700 *et seq.* establishes the procedures for instituting proceedings to determine whether a PCAOB proposed rule should be disapproved. Specifically, and consistent with Section 107 of the Sarbanes-Oxley Act, new Rule 170 clarifies that § 201.700 *et seq* applies to proposed rules of the PCAOB as fully as if it were a proposed rule change of a "registered securities association". Rule 170, like Section 107(b)(4)(A) of the Sarbanes-Oxley Act, substitutes the approval criteria to be "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors * * *." Further, given that the PCAOB is not explicitly subject to Rule 19b–4, Rule 170 also clarifies the requirement for the PCAOB to demonstrate that a proposed rule is "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors."[34]

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with the Administrative Procedure Act ("APA"),[35] that the new rules and rule amendments relate solely to agency organization, procedures or practices. Accordingly, these new rules and rule amendments are not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act,[36] therefore, does not apply. Similarly, because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," analysis of major status under the Small Business Regulatory Enforcement Fairness Act is not required.[37] The new rules and rule amendments do not contain any new collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[38] Rather, the new rules and rule amendments govern a process that the Commission will be able to institute when an SRO's proposed rule change submitted on Form 19b–4 failed to provide the Commission with a sufficient basis to make a finding whether the proposed rule change was or was not consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO. The required scope of information that an SRO must submit to the Commission to explain each proposed rule change and demonstrate that each proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder is established in existing Form 19b–4, and the rules and rule amendments do not contain any additional collection of information requirements beyond what SROs are already required to provide to the Commission.

III. Consideration of the Costs and Benefits of the Rule Amendments and Burden on Competition

The Commission is sensitive to the costs and benefits imposed by its rules and has identified certain costs and benefits of these rules. The rules and rule amendments that the Commission is adopting are intended to implement the mandate imposed by the Dodd-Frank Act. The benefits of the new rules and rule amendments also include increased transparency of the Commission's conduct of proceedings to determine whether to disapprove an SRO's proposed rule change. New Rules 201.700 and 701 and new Rule 170 under Regulation P establish procedures for the Commission to follow when instituting and conducting proceedings to determine whether to disapprove a proposed rule filing. The new rules and rule amendments provide procedures for the Commission, SROs, the PCAOB, and the public concerning the administration of certain of the Commission's responsibilities under Section 19 of the Exchange Act and

[29] In addition, a filing that does not comply with all applicable requirements, including the requirements of Form 19b–4, may be rejected as not properly filed under the circumstances outlined in Section 19(b)(10) of the Exchange Act. *See* Section 19(b)(10) of the Exchange Act, 15 U.S.C. 78s(b)(10) (setting forth the rule of construction relating to the filing date of proposed rule changes and the ability of the Commission to reject incomplete filings). Specifically, as stated in the general instructions to Form 19b–4, any filing that does not comply with the requirements of Form 19b–4 may be returned to the SRO and any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Exchange Act, 17 CFR 254.0–3 ("[t]he date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with * * *").

[30] *See* Rule 701; *see also* Exchange Act Section 19(b)(2)(C); 15 U.S.C. 78s(b)(2)(C).

[31] In the event that an oral presentation of supporting or opposing views is ordered by the Commission, the written transcript of the remarks would become part of the record.

[32] Rule 19b–4(g) is consistent with the process outlined in new Rules of Practice 700 and 701. However, to avoid any confusion or overlap, the Commission is amending the Rule 19b–4(g) to cross reference the new Rules of Practice.

[33] 17 CFR 202.100 *et seq.*

[34] 15 U.S.C. 7217(b)(4)(A).

[35] 5 U.S.C. 553(b)(3)(A).

[36] 5 U.S.C. 601 *et seq.*

[37] 5 U.S.C. 804(3)(C).

[38] 44 U.S.C. 3501 *et seq.*

Section 107 of the Sarbanes-Oxley Act, and reflect a process that is intended to help ensure that only those proposed rule changes that are consistent with the Exchange Act and title I of the Sarbanes-Oxley Act, respectively, are permitted.

There also are potential costs of the new rules. An SRO or the PCAOB may incur costs as a result of the new rules, for example, when submitting written material in support of its proposed rule change or providing a response to any adverse comments received. However, the Commission believes that such costs typically are already incurred by the SROs when filing proposed rule changes on Form 19b–4, particularly since Form 19b–4 contains comprehensive and rigorous requirements that an SRO must follow when presenting, explaining, and offering a thorough legal analysis of each proposed rule change. Further, SROs already typically submit responses to adverse substantive comments received during the rule filing process. Similarly, the PCAOB has incurred costs by presenting, explaining, and offering similarly rigorous legal analysis of each of its proposed rules.

Further, because the new rules and rule amendments relate to agency organization, procedures or practice, the Commission believes that they will have no adverse impact on capital formation, nor are they expected to have any potential adverse impact on efficiency. In particular, the new rules and rule amendments are intended to add transparency to the Commission's institution and conduct of proceedings to determine whether to disapprove a proposed rule change. To the extent that interested parties identify issues and present information that informs the Commission's decision-making with respect to a particular proposed rule change that itself may affect capital formation or price efficiency, then the Commission's new rules and rule amendments could, in turn, promote capital formation and efficiency.

Section 23(a) of the Exchange Act [39] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The new rules and rule amendments implement the Dodd-Frank Act statutory changes to the rule change process and are intended to enhance transparency with respect to the Commission's conduct of proceedings under the Exchange Act to determine whether to disapprove an SRO's proposed rule change or a proposed rule of the PCAOB. The new rules, which set forth the administrative procedures concerning the Commission's conduct of such proceedings, apply equally to all SROs, including all national securities exchanges, FINRA, and clearing agencies that are required to submit proposed rule filing changes with the Commission. We note that many of the substantive requirements of the new rules come directly from the amendments to Exchange Act Section 19(b) by the Dodd-Frank Act. In addition, these rules are intended to codify and reflect the typical process that the Commission has followed when conducting proceedings to determine whether to disapprove an SRO's proposed rule change. Therefore, the Commission does not expect the rules to have an anti-competitive effect. To the contrary, the new rules provide all interested parties with an opportunity to express their views to the Commission concerning an SRO's proposed rule change or a proposed rule of the PCAOB that the Commission is considering potentially disapproving. To that extent, the new rules are expected to promote competition and help ensure that SRO rules are consistent with the Exchange Act and the rules and regulations thereunder and PCAOB rules and standards are consistent with the Sarbanes-Oxley Act and the rules and regulations thereunder.

[39] 15 U.S.C. 78w(a).

IV. Statutory Basis and Text of Rules

The Commission is amending its Rules of Practice and Rule 19b–4 pursuant to authority set forth in the Exchange Act, including Sections 19(b) and 23(a). The Commission is amending Regulation P pursuant to authority set forth in the Sarbanes-Oxley Act, including Sections 3(b) and 107 and the Exchange Act, including Sections 19(b) and 23(a).

List of Subjects in 17 CFR Parts 201, 202 and 240

Administrative practice and procedures.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201 is amended by adding authority citations for §§ 201.700 to 201.702 to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a–37, and 80b–11; 5 U.S.C. 504(c)(1).

Sections 201.700 to 201.702 are also issued under sec. 916, Pub. L. 111–203, 124 Stat. 1376.

■ 2. Section 201.100 is amended by adding new paragraph (b)(3) to read as follows:

§ 201.100 Scope of the rules of practice.

* * * * *

(b) * * *

(3) Initiation of proceedings for SRO proposed rule changes under 17 CFR 201.700–701, except where made specifically applicable therein.

* * * * *

■ 3. Add §§ 201.700 and 201.701 to read as follows:

§ 201.700 Initiation of proceedings for SRO proposed rule changes.

(a) *Rules of Practice.* For purposes of these Rules of Practice contained at 17 CFR 201.700 through 201.701, the following Rules of Practice apply:

(1) Rule 103, 17 CFR 201.103 (Construction of Rules);

(2) Rule 104, 17 CFR 201.104 (Business Hours); and

(3) Rule 160, 17 CFR 201.160 (Time Computation).

(b) *Institution of proceedings; notice and opportunity to submit written views.*

(1) *Generally.* If the Commission determines to initiate proceedings to determine whether a self-regulatory organization's proposed rule change should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change, as well as all interested parties and the public, by publication in the **Federal Register** of the grounds for disapproval under consideration.

(i) *Prior to notice.* If the Commission determines to institute proceedings prior to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change in the **Federal Register**, then the Commission shall publish notice of the proposed rule change simultaneously with a brief summary of the grounds for disapproval under consideration.

(ii) *Subsequent to notice.* If the Commission determines to institute proceedings subsequent to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change in the **Federal Register**, then the Commission shall publish separately in the **Federal Register** a brief summary of the grounds for disapproval under consideration.

(iii) *Service of an order instituting proceedings.* In addition to publication in the **Federal Register** of the grounds for disapproval under consideration, the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the grounds for disapproval under consideration to the self-regulatory organization that filed the proposed rule change by serving notice to the person listed as the contact person on the cover page of the Form 19b–4 filing. Notice shall be made by delivering a copy of the order to such contact person either by any method specified in 17 CFR 201.141(a) or by electronic means including e-mail.

(2) *Notice of the grounds for disapproval under consideration.* The grounds for disapproval under consideration shall include a brief statement of the matters of fact and law on which the Commission instituted the proceedings, including the areas in which the Commission may have questions or may need to solicit additional information on the proposed rule change. The Commission may consider during the course of the proceedings additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

(3) *Demonstration of consistency with the Exchange Act.* The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization is on the self-regulatory organization that proposed the rule change. As reflected in the General Instructions to Form 19b–4, the Form is designed to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all information elicited by the Form, including the exhibits, and must present the information in a clear and comprehensible manner. In particular, the self-regulatory organization must explain why the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements, or that another self-regulatory organization has a similar rule in place, is not sufficient. Instead, the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(c) *Conduct of hearings.*

(1) *Initial comment period in writing.* Unless otherwise specified by the Commission in its notice of grounds for disapproval under consideration, all interested persons will be given an opportunity to submit written data, views, and arguments concerning the proposed rule change under consideration and whether the Commission should approve or disapprove the proposed rule change. The self-regulatory organization that submitted the proposed rule change may file a written statement in support of its proposed rule change demonstrating, in specific detail, how such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the self-regulatory organization. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

(2) *Oral.* The Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.

(3) *Rebuttal.* At the end of the initial comment period, the self-regulatory organization that filed the proposed rule change will be given an opportunity to respond to any comments received. The self-regulatory organization may voluntarily file, or the Commission may request a self-regulatory organization to file, a response to a comment received regarding any aspect of the proposed rule change under consideration to assist the Commission in determining whether the proposed rule change should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(4) *Non-response.* Any failure by the self-regulatory organization to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(d) *Record before the Commission.*

(1) *Filing of papers with the Commission.* Filing of papers with the Commission shall be made by filing them with the Secretary, including through electronic means. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change, the Commission shall inform interested parties of the methods by which they may submit written comments and arguments for or against Commission approval.

(2) *Public availability of materials received.* During the conduct of the proceedings, the Commission generally will make available publicly all written comments it receives without change. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change, the Commission shall inform interested parties of the methods by which they may view 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.

(3) *Record before the Commission.* The Commission shall determine each matter on the basis of the record. The record shall consist of the proposed rule change filed on Form 19b–4 by the self-regulatory organization, including all attachments and exhibits thereto, and all written materials received from any interested parties on the proposed rule change, including the self-regulatory organization that filed the proposed rule change, through the means identified by the Commission as provided in paragraph (1), as well as any written materials that reflect communications between the Commission and any interested parties.

(e) *Amended notice not required.* The Commission is not required to amend its notice of grounds for disapproval under consideration in order to consider, during the course of the proceedings, additional matters of fact and law beyond what was set forth in the notice

of the grounds for disapproval under consideration.

§ 201.701 Issuance of order.

At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(b)(4), the Commission may issue an order approving or disapproving the self-regulatory organization's proposed rule change together with a written statement of the reasons therefor.

PART 202—INFORMAL AND OTHER PROCEDURES

■ 4. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, and 7201 *et seq.,* unless otherwise noted.

■ 5. Add § 202.170 to read as follows:

§ 202.170 Initiation of disapproval proceedings for PCAOB proposed rules.

Initiation of disapproval proceedings for proposed rules of the Public Company Accounting Oversight Board as defined by section 107 of the Sarbanes-Oxley Act of 2002 are subject to the provisions of §§ 201.700 and 201.701 of this chapter as fully as if it were a *registered securities association,* except that:

(a) *Demonstration of Consistency with the Sarbanes-Oxley Act of 2002.* For purposes of proposed rules of the Public Company Accounting Oversight Board, apply this paragraph in lieu of paragraph (b)(3) of § 201.700 of this chapter. The burden to demonstrate that a proposed rule is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors, is on the Public Company Accounting Oversight Board. In its filing the Public Company Accounting Oversight Board must explain in a clear and comprehensible manner why the proposed rule change is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002 and the rules and regulations thereunder, or as necessary or appropriate in the public interest or for the protection of investors. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. Instead, the description of the proposed rule, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure by the Public Company Accounting Oversight Board in its proposed rule filing with the Commission may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors.

(b) For each reference to "the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization" apply "title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors."

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

■ 6. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

■ 7. Section 240.19b–4 is amended by revising paragraphs (g), (l)(1) and (l)(4) to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(g) Proceedings to determine whether a proposed rule change should be disapproved will be conducted pursuant to 17 CFR 201.700–701 (Initiation of Proceedings for SRO Proposed Rule Changes).

* * * * *

(l) * * *

(1) In the case of a proposed rule change filed under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the Commission approves or disapproves the proposed rule change or the self-regulatory organization withdraws the proposed rule change, or any amendments, or is notified that the proposed rule change is not properly filed; or

* * * * *

(4) In the case of a proposed rule change, or any amendment thereto, that has been disapproved, withdrawn or not properly filed, the self-regulatory organization shall remove the proposed rule change, or any amendment, from its Web site within two business days of notification of disapproval, improper filing, or withdrawal by the SRO of the proposed rule change.

* * * * *

By the Commission.

Dated: January 14, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1199 Filed 1–21–11; 8:45 am]

BILLING CODE 8011–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2010–6]

Registration of Claims of Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The Copyright Office is adopting interim regulations governing the electronic submission of applications for registration of automated databases that predominantly consist of photographs, and applications for group registration of published photographs. This interim rule establishes a testing period and pilot program during which the Copyright Office will assess the desirability and feasibility of permanently allowing such applications to be submitted through the Copyright Office's electronic filing system ("eCO"). Persons wishing to submit electronic applications to register copyrights of such photographic databases or of groups of published photographs should contact the Visual Arts Division for permission and guidance on electronic registration. Notwithstanding the ordinary deposit requirements for group registration of automated databases, an electronic application for group registration of an automated database that consists predominantly of photographic authorship must include the image of each claimed photograph in the database. The interim regulations also allow applicants to use forms other than Form TX, as appropriate, when submitting paper applications to register group automated databases.

DATES: *Effective Date:* January 24, 2011.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Catherine Rowland, Attorney Advisor, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024.

Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In order to advise the public of and align its regulations with its registration practices relating to certain kinds of group registrations involving photographic authorship, the Copyright Office is publishing this notice to establish a limited pilot program to allow online submission of copyright applications for photographs using the procedures for registration of (1) automated databases and (2) groups of published photographs.

For over three years, the Copyright Office has offered and encouraged the option of submitting applications for copyright registration online. *See* Online Registration of Claims to Copyright, 72 FR 36883 (July 6, 2007). However, although online registration has been available for basic registration claims, it has not yet been made generally available for group registrations. While the Office has proposed that online registration be required in the future for all group registrations, *see* Registration of Claims to Copyright, Group Registration Options, 73 FR 23390, 23392 (Apr. 30, 2008), that proposal has not yet been implemented because most of the group registration options require specialized applications that have not yet been integrated into the Office's eCO system.

The Copyright Office has long had in place provisions permitting photographers to register groups or collections of photographs. Since the enactment of the Copyright Act of 1976, the Copyright Office has permitted the registration of groups of unpublished photographs (or of any other unpublished works) as part of a single "collection" when certain requirements have been met. The most significant of those requirements are that the copyright claimant in each of the works, and in the collection as a whole, must be the same and that all the works must have at least one common author. *See* 37 CFR 202.3(b)(4)(i)(B). Similarly, for published works, registration as a single work has been permitted for "all copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same." 37 CFR 202.3(b)(4)(i)(A).

In 2001, after an extensive rulemaking proceeding, the Office adopted a group registration procedure for published photographs that complemented the already existing unpublished collection procedure. *See* Registration of Claims to Copyright; Group Registration of Photographs, 66 FR 37142 (July 17, 2001). The result was a new group registration procedure permitting registration of a group of published photographs, all taken by the same photographer and published within the same calendar year, upon submission of an application for registration and a deposit consisting of each of the images covered by the registration. At the same time, the Office liberalized its requirements with respect to acceptable formats of deposits of photographs for registrations of unpublished collections, as well as for the new group registration of published photographs option. *See* 37 CFR 202.3(b)(10) and 202.20(c)(2)(xx). The 2001 regulations ensured that the registration record and the deposit would provide a sufficient record to inform the public of the existence and scope of the registered copyright claim.

However, some groups of photographs have also been registered by using another option permitting group registration of automated databases. The group database registration option was first announced in 1989. *See* Registration of Claims to Copyright Registration and Deposit of Databases, 54 FR 13177 (March 31, 1989). It has been used to register databases consisting predominantly of photographic images since at least 1997. *See, e.g.,* Registration No. VA 863–785 (Corbis Digital Online Update Group, from March 18–June 30, 1997) (effective date Nov. 6, 1997). While a published database would be registerable under the "single unit of publication" rule of § 202.3(b)(4)(i)(A), the group database registration provisions permit the making of a single registration that covers up to three months' worth of updates and revisions to an automated database when all of the updates or other revisions (1) are owned by the same copyright claimant, (2) have the same general title, (3) are similar in their general content, including their subject, and (4) are similar in their organization. 37 CFR 202.3(b)(5). Using this provision, stock photography agencies have been able to obtain registrations covering all the photographs added to their databases within a three-month period when they have obtained copyright assignments from the photographers.

In the coming months, the Copyright Office is likely to initiate a review of the circumstances and conditions under which database registrations may be made and the extent to which, going forward, such registrations should continue to be deemed to cover not only the compilation authorship (*i.e.,* the authorship involved in the selection, coordination and arrangement of the data and/or works assembled in a database) but also any or all of the works assembled in the database.

Accordingly, and in light of the longstanding availability of the option of registering unpublished collections and the lengthy and carefully considered rulemaking that established the procedures for group registration of published photographs, the Office prefers and urges claimants to use those two options when registering groups of photographs rather than using the provisions for registration of automated databases.

However, at least at this point in time, the Office is not prepared to impose new limits on the availability of group registration for automated databases when the content that is registered is primarily photographic in nature. In fact, the Visual Arts Division has accepted some online applications for registration of photographic databases and has adopted certain practices that are not currently reflected in the Office's regulations. The Register has concluded that it would be advantageous to the Office and applicants to conduct a pilot program to evaluate the conditions under which online registration of automated databases consisting predominantly of photographs can and should be made, and to clarify in the Office's regulations that online applications may be accepted for such databases.

Similarly, some applicants have already submitted online applications for registration under the Office's procedure for group registration of published photographs in recent months. Although the Office had not announced the availability of online applications for group registration of photographs, the Visual Arts Division has processed some online applications when all the required information has been included. In order to reconcile this practice with the Office's regulations and to determine what ultimately will be the specific requirements for online applications for group registration of published photographs, the Office is also offering a pilot program to assess online applications for group registration of photographs.

Issues with Respect to Registration of Automated Databases Consisting Predominantly of Photographs

1. Online Submission of Applications; Availability of the Appropriate Forms for Print Applications

Currently, the Office encourages the initial registration of an automated database to be submitted electronically through the Office's eCO system.

However, the Office generally has not allowed group registrations, including group registrations of automated databases, to be submitted through the eCO system because eCO is not yet set up to take in the information required on the specialized application forms for many of the Office's group registration options. With respect to group registration of automated databases, the Office's existing regulation provides that "[a]n application for group registration of automated databases under section 408(c)(1) of title 17 and this subsection shall consist of * * * [a] Form TX" along with the filing fee and deposit. 37 CFR 202.3(b)(5)(ii)(A). Form TX is a paper application

Other information provided by the Copyright Office relating to group database registrations also appears to be inconsistent with the acceptance of online applications. Until very recently, Circular 65, *Copyright Registration for Automated Databases,* stated: "Group registrations cannot be submitted through eCO or fill-in Form CO. Instead, the Form TX must be completed and mailed to the Copyright Office with the appropriate fee and deposit." *See* Copyright Office, Circular 65, Copyright Registration for Automated Databases 3 (2009) (currently undergoing revision). *See also* Copyright Office Form Letter 110, *Group Registration for Automated Databases* (Revised: 27–Jun–2008), *available at http://www.copyright.gov/fls/fl110.html.*

Unlike most of the other group registration options, group registration for automated databases does not require a special group form. As noted above, traditionally such registrations have been made using Form TX, the paper form used for all published and unpublished nondramatic literary works. The Copyright Office's online registration system, eCO, currently is capable of handling applications for group registration of automated databases. However questions remain about the capacity of the system to accommodate applications listing very large numbers of authors or titles, and large or complex electronic transfers of deposits may encounter issues related to file size or transmission speed.

Moreover, although the provisions for group registration of automated databases traditionally have been used primarily for registrations of databases consisting either of literary works or of data, the Office has also, for over a decade, accepted applications for group registration of automated databases when the works collected in a database have consisted predominantly of photographic authorship. Such applications have been made using Form VA, the paper form used for works of the visual arts.

Thus, to the extent that the existing regulation on group registration of automated databases requires the use of Form TX, it is inconsistent with existing practice in two respects: (1) Some applications have been made online using eCO, rather than using a paper form, and (2) even when a paper form is used, a form other than Form TX may be used depending on the subject matter of the works included in the database.

In order to reconcile the regulatory text with current practice, the Office is amending its regulations governing group registration of automated databases to clarify that, rather than being required to use Form TX, an applicant should use the form that best reflects the subject matter of the works included in the database.[1] For example, when the works in a database consist predominantly of photographs, the print application should be made by submitting Form VA rather than Form TX. Moreover, the Office is formally announcing its pilot program allowing applicants to file online applications for automated databases consisting predominantly of photographs. Before filing such an online application, however, the applicant must first contact the Office's Visual Arts Division at 202–707–8202 to coordinate the filing and to obtain proper guidance concerning the information to be included in the application. Applicants will only be allowed to file online applications for automated databases consisting predominantly of photographs after obtaining authorization from the Visual Arts Division and following the Division's instructions. In order to utilize the online registration system's capacity to accept more information in an application covering a large number of works and thereby to create a clearer, more comprehensive public record, and in order to adapt to lessons learned as such applications are examined and processed, the Visual Arts Division will permit participation in the pilot program only by applicants who can utilize the online registration system consistent with those goals. For now, the online registration option for group database registrations will be limited to photographic databases.

[1] With respect to paper forms, the existing practice appears to have related only to Form VA, but in principle there is no reason why Form PA or Form SR should not be used to register a database when the authorship consists predominantly of works of the performing arts or sound recordings, respectively.

2. Deposit Requirements

A significant respect in which the provisions governing registration of automated databases differ from the other provisions for registration of photographs discussed above lies in the relaxed deposit requirements for databases embodied in machine-readable copies (other than in a CD–ROM format). Section 202.20(c)(2)(vii)(D)(5) of the Copyright Office regulations provides that for group database registrations (as well as single database applications), the application need not be accompanied by a deposit of the entire work, but instead may be accompanied by identifying material consisting of fifty representative pages or data records marked to show the new material added on one representative day, along with some additional identifying information. As a result, the deposit accompanying a database registration application can consist of a fraction of the copyrightable material that is covered by the registration.

This is in stark contrast to the deposit requirements for registration of unpublished collections, for group registrations of published photographs, and for most other forms of copyright registration. Section 202.3(b)(10)(x), which governs the deposit for a group registration of photographs, provides that the deposit shall consist of "one copy of each photograph [to] be submitted in one of the formats set forth in Sec. 202.20(c)(2)(xx)." *See also* § 202.20(c)(1)(i) ("in the case of unpublished works, [the deposit shall consist of] one complete copy or phonorecord," a provision that applies to registrations of unpublished collections as well as individual unpublished works). Section 202.20(c)(2)(xx) provides for a number of options with respect to the formats in which photographs may be submitted.

The Copyright Office believes that when registration is made for a database consisting predominantly of photographs and the copyright claim extends to the individual photographs themselves, each of those photographs should be included as part of the deposit accompanying the application. As the Office said when it announced its regulations on group registration of published photographs:

> [T]he Office rejects the plea of at least one commenter to permit the use of descriptive identifying material in lieu of the actual images. Although the Office had previously expressed a willingness to consider such a proposal, the most recent notice of proposed rulemaking noted that 'the Office is reluctant to implement a procedure that would permit the acceptance of deposits that do not

meaningfully reveal the work for which copyright protection is claimed.' 65 FR at 26164. Deposit of the work being registered is one of the fundamental requirements of copyright registration, and it serves an important purpose. As the legislative history of the Copyright Act of 1976 recognizes, copies of registration deposits may be needed for identification of the copyrighted work in connection with litigation or for other purposes. *See* H.R. Rep. No. 94–1476, at 171 (1976). *See also Seiler* v. *Lucasfilm, Inc.,* 808 F.2d 1316, 1322 (9th Cir. 1986) (noting that 'possibilities for fraud would be limitless' if reconstructions of claimant's original work could be submitted as registration deposits); *Tradescape.com* v. *Shiraram,* 77 F.Supp.2d 408, 413–14 (S.D.N.Y. 1999) (noting that when deposit of redacted version of computer program is permitted, the result in infringement litigation is uncertainty as to whether allegedly infringed code actually is the subject of an existing registration). The ability of litigants to obtain a certified copy of a registered work that was deposited with the Office prior to the existence of the controversy that led to a lawsuit serves an important evidentiary purpose in establishing the identify and content of the plaintiff's work.

Registration of Claims to Copyright, Group Registration of Photographs, 66 FR 37142, 37147 (July 17, 2001).

Moreover, the actual practice with respect to online registrations of predominantly photographic databases has in fact been to include all of the photographs in the deposit. In order to conform to actual practice and the Office's determination of what a reasonable deposit requirement should include, the Office is amending its regulations to provide that when an online application is made for registration of an automated database consisting predominantly of photographs, the deposit shall include all of the photographs claimed to be part of the registration. Identifying material will *not* constitute a sufficient deposit. As noted above, this conforms with what has in fact already been the general practice with respect to online applications. The Office is separately publishing a notice of proposed rulemaking that would impose a similar requirement with respect to paper applications for registration of photographic databases.

The requirement that all photographs covered by a registration are to be included as part of the deposit is in addition to the existing deposit requirements for identifying material set forth in section 202.20(c)(2)(vii)(D).

Because of issues regarding limitations on the size of deposits that may be submitted online, applicants for group registrations of photographic databases must confer with the Visual Arts Division with respect to each application to determine whether to submit their deposits electronically, or whether to submit the deposits by mail using one of the approved formats set forth in 37 CFR 202(c)(2)(xx).

Issues with Respect to Group Registration of Published Photographs

As with group database registrations, up to now the Office has not formally announced that online registration is available for group registration of published photographs. However, a number of claimants have submitted applications for group registration of published photographs through eCO and the Visual Arts Division has in some cases processed those claims.

Because experience has shown that the requirements for group registration of published photographs can be satisfied by means of online applications, the Office has decided that it will undertake a pilot program to assess the online application process for these applications. This will enable the Office to determine whether the eCO system can successfully handle different applications for group registration of published photographs. Therefore, applicants wishing to obtain group registrations for published photographs will be allowed to apply for registration online during the pilot program. As with group registrations of photographic databases, before filing such an online application, the applicant must first contact the Office's Visual Arts Division at 202–707–8202 to coordinate the filing and to obtain guidance concerning the information to be included in the application. Applicants will only be allowed to file such online applications after obtaining authorization from the Visual Arts Division and following the Division's instructions. Additionally, applicants must confer with the Visual Arts Division with respect to each application in order to determine whether their deposits may be submitted electronically due to potential limitations on the size of electronically submitted deposits.

Technical Correction

The Office is also amending Section 202.20(c)(2)(xx) to correct three cross-references to other regulations.

Adoption of Interim Regulations

Section 553(b)(3)(A) of the Administrative Procedure Act states that general notice of proposed rulemaking is not required for rules of agency organization, procedure, or practice. Since the Office finds that the following interim regulations are rules of agency organization, procedure, or practice, no notice of proposed rulemaking is required. Additionally, the interim regulations are consistent with the Office's existing practices and relieve applicants from procedural restrictions. Pursuant to section 553(d) of the Administrative Procedure Act, these regulations may be effective immediately. Moreover, the Register finds that because these regulations provide additional options to applicants for registration of automated databases and for group registration of published photographs, good cause exists for making these interim rules effective immediately and without notice and comment. As the pilot program for online registration of these groups proceeds, the Office will learn from its experience and develop proposals for more comprehensive final regulations.

List of Subjects in 37 CFR Part 202

Copyright.

Interim Regulation

For the reasons set forth in the preamble, part 202 of Title 37 of the Code of Federal Regulations is amended to read as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.3as follows:

■ a. By revising paragraph (b)(5)(ii)(A); and

■ b. By adding new paragraph (b)(10)(xi).

The revisions and additions to § 202.3 read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) A form that best reflects the subject matter of the material in the database as set forth in paragraph (b)(2) of this section, completed in accordance with the basic instructions on the form and the Special Instructions for Group Registration of an Automated Database and its Updates or Revisions, except that in the case of an application for group registration of an automated database consisting predominantly of photographs, after consultation and with the permission and under the direction of the Visual Arts Division, the application may be submitted electronically.

* * * * *

(10) * * *

(xi) Instead of using Form VA, an applicant may submit an electronic application for group registration of published photographs after consultation and with the permission and under the direction of the Visual Arts Division.

* * * * *

■ 3. Amend § 202.20 as follows:

■ a. By amending (c)(2)(vii)(D)(5) to add "or in the case of electronically submitted applications for automated databases that predominantly consist of photographs, the claimant shall deposit identifying portions that comply with (D)(8) of this section; the claimant shall" after "if unpublished," and deleting "and shall" before "also deposit";

■ b. By adding new paragraph (c)(2)(vii)(D)(8);

■ c. By amending the introductory text in paragraph (c)(2)(xx) to add "and for automated databases that consist predominantly of photographs registered with an application submitted electronically under § 202.3(b)(5)(ii)(A)" after "(group registration of published photographs)", by removing "202.3(b)(3)(i)(B)" and adding "202.3(b)(4)(i)(B)" in its place; and by removing "202.3(b)(9)" and adding "202.3(b)(10)" in its place; and

■ d. By amending paragraph (c)(2)(xx)(F) to add "or database" after "included in the group" and to remove "202.3(b)(9)" and add "202.3(b)(10)" in its place.

The revisions and additions to § 202.20 read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(vii) * * *

(D) * * *

(8) In the case of an application submitted electronically for registration of a database that consists predominantly of photographs (including a group registration for revised or updated versions of such a database), "identifying portions" shall instead consist of all individual photographs included in the claim either in one of the formats set forth in paragraph (c)(2)(xx) of this section or in an electronic format submitted along with the electronic application after consultation and with the permission and under the direction of the Visual Arts Division.

* * * * *

Dated: December 30, 2010.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 2011–1332 Filed 1–21–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2010–0176; FRL–9248–6]

Approval and Promulgation of Implementation Plan and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to Missouri's State Implementation Plan (SIP) and Operating Permits Program. EPA is approving the rescission of initial compliance dates in the Missouri SIP. These requirements were established more than thirty years ago and are obsolete. EPA is also approving revisions to the Operating Permits Program to change the reporting threshold for small sources and remove references to the requirement to annually set the emission fee. Approval of these revisions will ensure consistency between the State and the Federally-approved rules.

DATES: This direct final rule will be effective March 25, 2011, without further notice, unless EPA receives adverse comment by February 23, 2011. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0176, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: wolfersberger.chris@epa.gov.*

3. *Mail or Hand Delivery:* Chrissy Wolfersberger, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0176. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger at (913) 551–7864, or by e-mail at *wolfersberger.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides

additional information by addressing the following questions:

What is being addressed in this document?

What action is EPA taking?

What is being addressed in this document?

EPA is approving revisions to the Missouri SIP and Operating Permits Program. Revisions to the Missouri SIP rescind three rules related to the time schedule for initial compliance for sources existing at the time of promulgation of the original rules. The purpose of these rules was to establish compliance schedules for sources that were in operation more than 30 years ago. (For example, 10 CSR 10–5.250 required existing sources to comply with emissions limitation no later than January 31, 1973, if they emitted sulfur dioxide from the use of fuel.) These rules are identified in the approved SIP as 10 CSR 10–2.150, 4.140, and 5.250, applicable to the Kansas City, Springfield, and St. Louis areas. These rules are obsolete and no longer needed, as compliance dates are contained in other State rules, or, if there is no date specified, is the effective date of the rule. Removing them does not adversely affect the stringency of the SIP. EPA is approving Missouri's request to remove the corresponding Federally-approved rules from the Missouri SIP.

EPA is also approving revisions to the Operating Permits Program (10 CSR 10–6.110). One revision changes the reporting threshold for small sources, so that small sources are allowed to fill out a short emissions form instead of a long form if they increase or decrease emissions under a certain threshold. The threshold would change from an increase of 20 percent of emissions from the prior year to 5 tons from the prior year. Sources with small baseline emissions might have substantial percentage increases, but very small tonnage increases. This revision allows small sources to continue to report emissions using a shorter form. The second revision removes references to the requirement to annually set the emission fee, because the Missouri statute does not require an annual fee adjustment unless determined necessary by the Air Conservation Commission.

What action is EPA taking?

EPA is approving the request to amend the Missouri SIP by removing three rules related to the time schedule for compliance and approving the request to amend the operating permits program by changing the reporting threshold for small sources and removing references to the requirement to annually set the emission fee.

Approval of these revisions will ensure consistency between State and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial and make regulatory revisions, required by State statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

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 action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 27, 2010.

Karl Brooks,

Regional Administrator, Region 7.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended by revising the entries under Chapter 2 for "10–2.150," under Chapter 4 for "10–4.140," and under Chapter 5 for "10–5.250". The amended table reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10–2.150	Time Schedule for Compliance	12/30/2008	1/24/11 [*insert FR page number where the document begins*].	The State has rescinded this rule.
*	*	*	*	*
Chapter 4—Air Quality Standards and Air Pollution Control Regulations for Springfield-Greene County Area				
*	*	*	*	*
10–4.140	Time Schedule for Compliance	12/30/2008	1/24/11 [*insert FR page number where the document begins*].	The State has rescinded this rule.
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
10–5.250	Time Schedule for Compliance	12/30/2008	1/24/11 [*insert FR page number where the document begins*].	The State has rescinded this rule.
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to part 70 is amended by adding paragraph (y) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(y) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information" on December 30, 2008; approval of section (3)(D) effective March 25, 2011.

* * * * *

[FR Doc. 2011–229 Filed 1–21–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2443; MM Docket No. 99–238; RM–9669]

Television Broadcasting Services; North Pole and Plattsburgh, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Hearst-

Argyle Stations, Inc. ("Hearst-Argyle"), the licensee of station WPTZ(DT), channel 14, North Pole, New York, proposing to reallot channel 14 from North Pole to Plattsburgh, New York, and to modify station WPTZ(DT)'s authorization to specify Plattsburgh as its community of license.

DATES: This rule is effective February 23, 2011.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 99–238, adopted January 4, 2011, and released January 5, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New York, is amended by:

■ a. Removing channel 14 from North Pole, and by removing North Pole.

■ b. Removing Plattsburg and adding in its place Plattsburgh; and

■ c. Adding channel 14 to Plattsburgh.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2011–1376 Filed 1–21–11; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

RIN 2700–AD46

Information Technology (IT) Security

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is revising the NASA FAR Supplement (NFS) to update requirements related to Information Technology Security, consistent with Federal policies for the security of unclassified information and information systems. The rule imposes no new requirements. Its purpose is to more clearly define applicability, update procedural processes, eliminate the requirement for contractor personnel to meet the NASA System Security Certification Program, and provide a Web site link within a contract clause to a library where contractors can find all underlying regulations and referenced documents.

DATES: *Effective Date:* January 24, 2011.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, Contract Management Division; (202) 358–0592; e-mail: *leigh.pomponio@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA published a proposed rule in the **Federal Register** (73 FR 73201–73202) on December 2, 2008. The sixty day comment period expired February 2, 2009. Six comments were received from two respondents.

Comment: IT Security should be addressed through government-wide policies, standards, and requirements.

NASA response: NASA has requested that the Defense Acquisition Regulation (DAR) Council consider a government-wide IT Security clause. However, due to the critical importance of protecting the Agency's Information Technology (IT) resources, the Agency will continue to pursue this case. When and if the Federal Acquisition Regulation (FAR) is amended to include similar coverage, the Agency will modify or eliminate any redundant coverage.

Comment: The proposed requirement to maintain a listing of NASA Electronic Information and IT resources is too broad.

NASA response: Although maintaining an inventory of electronic messages and other documents may appear burdensome, this information can be critical to the maintenance of our information systems and in meeting our institutional and mission objectives. At the completion of the contract, the Contracting Officer will be supported by the cognizant subject matter experts in properly assessing the information and determining disposition instructions.

Comment: The proposed requirement to represent that all NASA Electronic Information has been purged from the contractor's IT systems is unworkable.

NASA response: The clause has been revised and purging requirements have been deleted.

Comment: NASA should clarify the IT Security Management Plan Requirement.

NASA response: This requirement has been clarified at 1852.204–76. The IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

Comment: The Access Provision in NFS 1852.204–76 is duplicative of FAR 52.215–2 and should be deleted.

NASA response: FAR 52.215–2 deals primarily with access to the Contractor's cost and pricing data and other supporting records. The proposed provisions of 1852.204–76(f) concern access to contractor facilities, installations, operations, etc. in order to conduct IT inspection, investigation, and audit to safeguard against threats and hazards to NASA Electronic Information.

Comment: The Applicable Documents List (ADL) should contain all relevant security documents.

NASA response: The ADL attached to the contract will provide a specific

listing of all documents applicable to the contract. The ADL will point to NASA's Chief Information Officer (CIO) Web site at *http://www.nasa.gov/offices/ocio/itsecurity/index.html* and specifically to the section containing full text versions of all applicable documents. The Web site will also maintain archive access to previous versions of applicable documents to support any contract administration issues that may arise during performance of the contract.

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it does not impose any new requirements. The rule may result in some time savings, thereby reducing the economic impact to small entities because all contract IT requirements are being centralized at one easy-to-locate site.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1804 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1)

PART 1804—ADMINISTRATIVE MATTERS

■ 2. Section 1804.470–3 is revised to read as follows:

1804.470–3 IT security requirements.

(a) These IT security requirements cover all NASA awards in which IT plays a role in the provisioning of services or products (*e.g.,* research and development, engineering, manufacturing, IT outsourcing, human resources, and finance) that support NASA in meeting its institutional and mission objectives. These requirements are applicable when a contractor or subcontractor must obtain physical or electronic access beyond that granted the general public to NASA's computer systems, networks, or IT infrastructure. These requirements are applicable when NASA information is generated, stored, processed, or exchanged with NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

(b) The Applicable Documents List (ADL) should consist of all NASA Agency-level IT Security and Center IT Security Policies applicable to the contract. Documents listed in the ADL as well as applicable Federal IT Security Policies are available at the NASA IT Security Policy Web site at: *http://www.nasa.gov/offices/ocio/itsecurity/index.html.*

■ 3. Section 1804.470–4 is revised to read as follows:

1804.470–4 Contract clause.

(a) Insert the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in *all* solicitations and awards when contract performance requires contractors to—

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

(b) Parts of the clause and referenced ADL may be waived by the contracting officer if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 1852.204–76 is revised to read as follows:

1852.204–76 Security requirements for unclassified information technology resources.

As prescribed in 1804.470–4(a), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (MONTH YEAR)

(a) The contractor shall protect the confidentiality, integrity, and availability of NASA Electronic Information and IT resources and protect NASA Electronic Information from unauthorized disclosure.

(b) This clause is applicable to all NASA contractors and sub-contractors that process, manage, access, or store unclassified electronic information, to include Sensitive But Unclassified (SBU) information, for NASA in support of NASA's missions, programs, projects and/or institutional requirements. Applicable requirements, regulations, policies, and guidelines are identified in the Applicable Documents List (ADL) provided as an attachment to the contract. The documents listed in the ADL can be found at: *http://www.nasa.gov/offices/ocio/itsecurity/index.html.* For policy information considered sensitive, the documents will be identified as such in the ADL and made available through the Contracting Officer.

(c) Definitions.

(1) IT resources means any hardware or software or interconnected system or subsystem of equipment, that is used to process, manage, access, or store electronic information.

(2) NASA Electronic Information is any data (as defined in the Rights in Data clause of this contract) or information (including information incidental to contract administration, such as financial, administrative, cost or pricing, or management information) that is processed, managed, accessed or stored on an IT system(s) in the performance of a NASA contract.

(3) IT Security Management Plan—This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. Unlike the IT security plan, which addresses the IT system, the IT Security Management Plan addresses how the contractor will manage personnel and processes associated with IT Security on the instant contract.

(4) IT Security Plan—this is a FISMA requirement; see the ADL for applicable requirements. The IT Security Plan is specific to the IT System and not the contract. Within 30 days after award, the contractor shall develop and deliver an IT Security Management Plan to the Contracting Officer;

the approval authority will be included in the ADL. All contractor personnel requiring physical or logical access to NASA IT resources must complete NASA's annual IT Security Awareness training. Refer to the IT Training policy located in the IT Security Web site at *https://itsecurity.nasa.gov/policies/index.html.*

(d) The contractor shall afford Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA Electronic Information or to the function of IT systems operated on behalf of NASA, and to preserve evidence of computer crime.

(e) At the completion of the contract, the contractor shall return all NASA information and IT resources provided to the contractor during the performance of the contract in accordance with retention documentation available in the ADL. The contractor shall provide a listing of all NASA Electronic information and IT resources generated in performance of the contract. At that time, the contractor shall request disposition instructions from the Contracting Officer. The Contracting Officer will provide disposition instructions within 30 calendar days of the contractor's request. Parts of the clause and referenced ADL may be waived by the contracting officer, if the contractor's ongoing IT security program meets or exceeds the requirements of NASA Procedural Requirements (NPR) 2810.1 in effect at time of award. The current version of NPR 2810.1 is referenced in the ADL. The contractor shall submit a written waiver request to the Contracting Officer within 30 days of award. The waiver request will be reviewed by the Center IT Security Manager. If approved, the Contractor Officer will notify the contractor, by contract modification, which parts of the clause or provisions of the ADL are waived.

(f) The contractor shall insert this clause, including this paragraph in all subcontracts that process, manage, access or store NASA Electronic Information in support of the mission of the Agency.

(End of clause)

[FR Doc. 2010–32740 Filed 1–21–11; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA167

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet (18.3 Meters) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2011 Pacific cod total allowable catch (TAC) specified for pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2011, through 1200 hrs, A.l.t., September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 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 A season allowance of the 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI is 8,685 metric tons as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and inseason adjustment (76 FR 467, January 5, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2011 Pacific cod TAC allocated as a directed fishing allowance to pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catcher vessels greater than or equal to 60 feet (18.3 m) LOA in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 18, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1362 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA168

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2011, through 1200 hrs, A.l.t., March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 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 A season allowance of the 2011 TAC of pollock in Statistical Area 610 of the GOA is 4,786 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and inseason adjustment (76 FR 469, January 5, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2011 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,686 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 18, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1369 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA169

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2011, through 1200 hrs, A.l.t., March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 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 A season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA is 4,475 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and inseason adjustment (76 FR 469, January 5, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,175 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public

interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 18, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1361 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 15
Monday, January 24, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2010–0176; FRL–9248–5]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to Missouri's State Implementation Plan (SIP) and Operating Permits Program. EPA is proposing to approve the rescission of initial compliance dates in the Missouri SIP. These requirements were established more than thirty years ago and are obsolete. EPA is also proposing to approve revisions to the Operating Permits Program to change the reporting threshold for small sources and remove references to the requirement to annually set the emission fee. Approval of these revisions will ensure consistency between the State and the Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by February 23, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0176, by mail to Chrissy Wolfersberger, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger at (913) 551–7864 or by e-mail at *Wolfersberger.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the State's SIP and Operating Permits Program revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 27, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–239 Filed 1–21–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110103005–1005–01]

RIN 0648–BA48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a June through July seasonal closure of the recreational sector for greater amberjack in or from the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). The intended effect of the proposed rule is to maintain the rebuilding plan targets for the overfished greater amberjack resource, reduce the likelihood of exceeding the recreational quota for greater amberjack, minimize in-season quota closures for greater amberjack during peak recreational fishing months, and increase social and economic benefits for Gulf recreational fishers by maximizing the number of fishing days available to the recreation sector. This rule also proposes revisions to the codified text to clarify the definition of a venting device used to deflate the abdominal cavity of a Gulf reef fish.

DATES: Written comments must be received on or before February 23, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by 0648–BA48 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until 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. 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.

To submit comments through the Federal e-rulemaking portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0281" in the keyword search, then check the box labeled "Select to find documents accepting comments or submissions", then select "Send a comment or submission". NMFS will accept anonymous comments (enter N/A in the required

field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of the regulatory amendment, which includes an environmental assessment (EA), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org;* or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, 727–824–5305; *fax:* 727–824–5308.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Greater amberjack is currently overfished and undergoing overfishing and has been under a rebuilding plan since 2003. In 2006, a new stock assessment was completed and determined the stock was not recovering at the rate previously projected. The Council initiated a stock assessment update in 2010 with the Scientific and Statistical Committee (SSC) review occurring in January 2011.

During the February 2010 Council meeting, the Council requested that the greater amberjack recreational fishing season be reviewed and analyzed by Council staff and NMFS to potentially establish a recreational season closure. Currently, the recreational sector is open to harvest all year while the commercial sector has a seasonal closure of March through May each year.

In 2008, Amendment 30A to the FMP was approved for greater amberjack. NMFS issued a final rule on July 3, 2008 (73 FR 38139), to implement Amendment 30A. Amendment 30A established recreational and commercial quotas of 1,368,000 lb (620,514 kg) and 503,000 lb (228,157 kg), respectively. In 2008, the recreational sector remained open throughout the year with an estimated harvest of 88,731 lb (40,248 kg) under the quota. In 2008, the commercial sector harvested an estimated 412,516 lb (187,114 kg) round weight, 82 percent of the available quota.

In 2009, the greater amberjack recreational sector was projected to reach its quota and closed on October 24, 2009, which resulted in an estimated harvest overage of 124,817 lb (56,616 kg) round weight. The 9 percent overage in 2009 by the recreational sector was achieved in 69 fewer fishing days than in 2008. Accountability measures established in Amendment 30A reduced the 2010 recreational quota to 1,243,184 lb (563,899 kg) round weight, which was projected to be met in late August 2010. However, these projections were completed prior to the fishery closures implemented as a result of the Deepwater Horizon MC252 oil spill in the Gulf. Recent projections, completed by NMFS in October of 2010, indicate the 2010 quota for Gulf recreational greater amberjack is unlikely to be exceeded, primarily because of the Deepwater Horizon MC252 oil spill fishery closures and the associated reductions in recreational fishing effort. Final 2010 recreational harvest data will be available in the spring of 2011.

The commercial sector was closed on November 7, 2009 after harvesting an estimated 632,928 lb (287,091 kg), which accounts for a 25.8-percent overage of the 503,000 lb (228,157 kg) commercial quota. The 129,928-lb (58,934-kg) overage was deducted from the 2010 commercial quota resulting in a quota of 373,072 lb (169,223 kg) round weight for the 2010 fishing year, as prescribed in the accountability measures of Amendment 30A.

The greater amberjack rebuilding plan is scheduled to increase the total allowable catch (TAC) or annual catch limit of 2,547,000 lb (1,155,300 kg) round weight for the recreational sector and 938,000 lb (425,470 kg) round weight for the commercial sector in the years 2011–2013. These increases would only take place if the 2010 stock assessment reveals the greater amberjack stock is on schedule to be rebuilt in 2012. Should the 2010 stock assessment reveal that greater amberjack is not rebuilding on target, the quotas would remain at the current levels.

Provisions of This Proposed Rule

This proposed rule would establish a 2-month seasonal closure of the recreational sector for greater amberjack within the Gulf reef fish fishery. Harvest and possession of recreational greater amberjack would be prohibited in or from the Gulf EEZ during the months of June and July each year. In 2009, the recreational sector demonstrated it has the capacity to exceed the recreational quota, thus requiring an in-season quota closure and prompting the Council to review the recreational fishing season. At its October 2010 meeting, the Council voted to establish a 2-month seasonal closure, from June 1 through July 31, beginning in 2011. This seasonal closure is intended to minimize in-season quota closures for greater amberjack during peak economic fishing months and maximize social and economic benefits for Gulf recreational fishers by maximizing the number of fishing days available to the recreational sector.

This 2-month closure coincides with the open recreational seasons for other managed reef fish species, including red snapper. Dividing the recreational greater amberjack season into two portions of the year that bracket the red snapper season provides recreational fishers the opportunity to fish for at least one of the targeted species year round (provided the recreational quota for greater amberjack is not exceeded). A closed season for Gulf greater amberjack that overlaps with an open season for Gulf red snapper is intended to minimize the social and economic impacts to recreational fishers in the Gulf.

Additional Measure Contained in This Proposed Rule

NMFS implemented a "venting device" gear requirement for the Gulf reef fish fishery through Amendment 27 to the FMP. A final rule implementing this amendment published on January 29, 2008 (73 FR 5117). The venting device requirement became effective on June 1, 2008. The requirement states, "At least one venting tool is required and must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage." NMFS recently became aware that this requirement as well as the definition for "venting device" incorrectly specifies venting the "swim bladders" of fish. Instead, the regulation should require venting the "abdominal cavities" of fish. Venting the swim bladder of a fish could result in the mortality of the fish. However, venting the abdominal cavity of the fish allows the gases in the fish to escape, without causing harm to the fish. Therefore, through this rulemaking, NMFS proposes to revise the definition of "venting device" in § 622.2 and § 622.41 of the regulations, to more accurately characterize the part of the fish's anatomy where venting should occur. The venting tool should be used to vent the "abdominal cavity" of the fish, not the "swim bladder" of the fish.

This is a mere technical correction to appropriately identify the area on the fish to be vented. It in no other way alters the existing regulatory requirements.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, for this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (*see* **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would implement an annual seasonal closure for the recreational sector to the harvest of greater amberjack for the months of June through July in or from the Gulf EEZ. The purpose of this proposed rule is to maintain the rebuilding plan targets for the overfished greater amberjack resource, reduce the likelihood of exceeding the recreational quota for greater amberjack, minimize in-season quota closures for greater amberjack during peak recreational fishing months, and increase social and economic benefits for Gulf recreational fishers by maximizing the number of fishing days available to the recreational sector. The proposed rule also revises the definition of a venting device from one used to deflate the swim bladders of fish to one used to deflate the abdominal cavities of fish. This is a mere technical correction to align the definition of venting to its true intent of reducing mortality when releasing the fish.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified for this proposed rule.

The proposed rule is expected to directly affect for-hire fishing vessels that harvest greater amberjack in the Gulf. The for-hire sector is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. For-hire vessels are required to have a Gulf reef fish for-hire permit to harvest greater amberjack in the Gulf. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A for-hire business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries).

In 2009, there were 1,422 unique for-hire vessels that were permitted to operate in the Gulf reef fish fishery. These vessels were distributed as follows: 140 vessels in Alabama, 877 vessels in Florida, 101 vessels in Louisiana, 54 vessels in Mississippi, and 232 vessels in Texas. The for-hire permit does not distinguish between headboats and charter boats, but in 2009, the headboat survey program included 79 headboats. The majority of headboats were located in Florida (43), followed by Texas (22), Alabama (10), and Louisiana (4). It cannot be determined with available data how many of the 1,422 for-hire vessels permitted to operate in the Gulf reef fish fishery harvest greater amberjack, so all permitted for-hire vessels are assumed to comprise the universe of potentially affected vessels. The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

Based on these revenue estimates, all for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities. Some fleet activity (*i.e.,* multiple vessels owned by a single entity) may exist in the for-hire sector but its extent is unknown, and all vessels are treated as independent entities in this analysis.

All entities expected to be directly affected by the proposed rule are determined for the purpose of this analysis to be small business entities, so no disproportionate effects on small entities relative to large entities are expected because of this action.

The proposed rule would establish a June 1 through July 31 seasonal closure of the recreational greater amberjack sector of the Gulf reef fish fishery. On the other hand, the no action alternative would likely result in a recreational sector closure commencing on August 27, 2011, as a result of the quota being met or exceeded. Relative to the no action alternative, the proposed rule is expected, for the first year, to result in an increase in profits by $52,526 for the charterboat sector as a whole, or by $39 per charterboat. Conversely, the proposed rule is expected, in the first year, to result in a decrease in profits by $59,832 for the headboat sector as a whole, or by $757 per headboat. Relative to the average revenues of $88,000 per charterboat and $461,000 per headboat, the estimated effects of the proposed rule may be deemed relatively small. Considering the effects on charterboats and headboats as a whole, the proposed rule, in the first year is expected to result in a net decrease in overall for-hire vessel profits of $7,306. This net amount is deemed small, particularly when spread over all 1,422 for-hire vessels. In addition, it is expected that net profits for both charterboats and headboats would not deteriorate as much as they would under an unplanned quota closure associated with the no action alternative. Based on the resulting net effects on profits, it is concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Four alternatives, including the proposed action, were considered in this amendment. The first alternative to the proposed action is the no action alternative. This alternative resulted in quota closure and overages in 2009, prompting a reduction in the following year's (2010) quota. In April 2010, the recreational sector requested the Council to consider a seasonal closure to minimize the adverse effects of the quota closure. The second alternative to the proposed action would establish a March through May seasonal closure. This alternative is expected to result in larger overall adverse economic effects than the proposed action. While this alternative would result in less adverse economic effects on headboats, the adverse economic effects on charterboats would be substantially larger. The third alternative to the proposed action would establish a May through June seasonal closure. This third alternative has been estimated to result in larger adverse economic effects than the proposed action. Similar to the second alternative to the proposed action, this third alternative would result in less adverse economic effects on headboats but substantially larger

adverse economic effects on charterboats.

The proposed rule to correct the definition of venting device would have no additional economic effects on small entities because this tool is already required to be used, and this correction merely clarifies how it should be used.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 19, 2011.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition for "venting device" is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Venting device means a device intended to deflate the abdominal cavity of a fish to release the fish with minimum damage.

* * * * *

3. In § 622.34, paragraph (o) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(o) *Seasonal closure of the recreational sector for greater amberjack.* The recreational sector for greater amberjack in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

* * * * *

4. In § 622.41, the first sentence of paragraph (m)(3) is revised to read as follows:

622.41 Species Specific Limitations.

* * * * *

(m) * * *

(3) *Venting tool.* At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf reef fish to release the fish with minimum damage. * * *

* * * * *

[FR Doc. 2011–1370 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 15

Monday, January 24, 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 AGRICULTURE

Agricultural Research Service

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Agricultural Research Service, U.S. Sheep Experiment Station (USSES), Dubois, Idaho is proposing sheep grazing and associated activities to achieve its research goals and objectives (to develop integrated methods for increasing production efficiency of sheep and to simultaneously improve the sustainability of rangeland ecosystems).

DATES: Comments concerning the scope of the analysis must be received by March 10, 2011. The draft environmental impact statement is expected June 2011 and the final environmental impact statement is expected March 2012.

ADDRESSES: Comments should be addressed to Dr. Andrew C. Hammond, Director, USDA, ARS, Pacific West Area, ATTN: USSES Grazing Project 2010 Scoping. E-mail comments to: *USSES@fs.fed.us* (preferred). Written comments may be sent to: 800 Buchanan Street, Albany, CA 94710.

FOR FURTHER INFORMATION CONTACT: *Sue Wingate at USSES@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed action is to achieve the research goals and objectives (to develop integrated methods for increasing production efficiency of sheep and simultaneously to improve the sustainability of rangeland ecosystems) of the Agricultural Research Service, U.S. Sheep Experiment Station in Dubois, Idaho.

Proposed Action/No New Action Alternative

To achieve those goals and objectives, the Sheep Station is proposing to continue historic (approximately 92 years) sheep grazing and associated activities currently occurring on Agricultural Research Service lands, U.S. Forest Service and Bureau of Land Management allotments, and a Department of Energy feed lot. The proposed action would maintain the status quo and would be considered a "no new federal action" alternative.

In addition to grazing sheep on an annual rotation across Agricultural Research Service lands at the U.S. Sheep Experiment Station in Dubois, Idaho and nearby Forest Service and Bureau of Land Management allotments, the following activities would occur:

- Sheep trail and driveway use and maintenance.
- Maintenance and continuation of stock water operations.
- Camp tending—use of sheep herder camps and summer range camps.
- Maintenance and repair of existing permanent fence.
- Maintenance and repair of existing roads and fire breaks.
- Range improvement—prescribed burning and seeding.
- Cattle and horse grazing.
- Predator avoidance and abatement.
- Integrated pest management for noxious weeds.

Detailed information can be found in the Scoping Information document posted on the ARS Web site at: *http://www.ars.usda.gov/main/site_main.htm?modecode=53-64-00-00* under "News and Events".

Possible Alternatives

Four alternatives to the proposed action may be considered:

- No grazing. Under this alternative no grazing would occur; any sheep kept by the Station would be permanently housed at the Department of Energy feed lot.
- No grazing would occur on the East Summer, West Summer, and Humphrey Pastures as well as on the following Forest Service allotments: East Beaver and Meyers Creek.
- No grazing would occur on the East Summer Range as well as on the Forest Service Meyers Creek allotment.
- No grazing would occur on the Forest Service Snakey and Kelly allotments and the Bureau of Land Management Bernice allotment.

Responsible Official

Andrew C. Hammond, Agricultural Research Service Pacific West Area Director.

Nature of Decision To Be Made

With respect to the operations at the Agricultural Research Service U.S. Sheep Experiment Station, Dubois, Idaho, the responsible official will determine:

- Which actions, if any, will be approved, and
- What additional mitigation measures and monitoring requirements may be needed to protect resources.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered. However, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Dated: November 22, 2010.

Edward B. Knipling,

Administrator, ARS.

[FR Doc. 2011–1333 Filed 1–21–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Wisconsin Alumni Research Foundation of Madison, Wisconsin, an exclusive license to the Federal Government's patent rights in U.S. Patent No. 7,501,275, "Yeast Transformation System", issued on March 10, 2009.

DATES: Comments must be received on or before February 23, 2011.

ADDRESSES: Send comments to: Janet I. Stockhausen, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53726–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the address given above; telephone: 608–231–9502; fax: 608–231–9508; or e-mail: *jstockhausen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Wisconsin Alumni Research Foundation of Madison, Wisconsin has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–1334 Filed 1–21–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nicolet Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Nicolet Resource Advisory Committee will meet in Crandon, Wisconsin. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold a meeting to review submitted project proposals. The general public is invited to attend this meeting.

DATES: The meeting will be held on February 23, 2011, and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at the Forest County Courthouse, County Boardroom, 200 East Madison Street, Crandon, WI. Written comments should be sent to Penny McLaughlin, Chequamegon-Nicolet National Forest, 4978 Hwy 8 W, Laona, WI 54541. Comments may also be sent via e-mail to *pmclaughlin@fs.fed.us* or via facsimile to 715–674–2545.

FOR FURTHER INFORMATION CONTACT: Penny McLaughlin, RAC Coordinator, USDA, Chequamegon-Nicolet National Forest, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481; e-mail: *pmclaughlin@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review and recommend the project proposal submissions for Title II projects; and (2) Public Comment.

Dated: January 3, 2011.

Paul I V Strong,

Forest Supervisor.

[FR Doc. 2011–1307 Filed 1–21–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Automated Export System (AES) Program

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 25, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or instructions on how to complete the collection instrument should be directed to Joe A. Cortez, Chief, Regulations, Outreach and Education Branch, U.S. Census Bureau, 4600 Silver Hill Road, Room 6K125, Washington, DC 20233–6700, (301) 763–1413, by fax (301) 763–8835 or via the Internet at *joe.a.cortez@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Automated Export System (AES), is the instrument used for collecting export trade information. The data collected from this source is compiled by the U.S. Census Bureau and functions as the basis for the official U.S. export trade statistics. These statistics are used to determine the balance of international trade, and are also designated for use as a principal economic indicator. Title 13, United States Code (U.S.C.), Chapter 9, Section 301 authorizes the Census Bureau to collect, compile and publish export trade data. Title 15, Code of Federal Regulations (CFR), Part 30, contains the regulatory provisions for preparing and filing the AES record. These data are used in the development of U.S. Government policies that affect the economy. These data also enable U.S. businesses to develop practical export marketing strategies as well as provide a means for the assessment of the impact of exports on the domestic economy. These data collected from the AES record are also used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

The Foreign Trade Regulations (FTR) were published on June 2, 2008, and were implemented September 30, 2008. These regulations require the mandatory filing of export information through the AES or AES*Direct.* Currently, the Foreign Trade Regulations are being amended to reflect new export reporting requirements.

The Census Bureau plans to publish a Notice of Proposed Rule (NPR) addressing these changes and giving the

public opportunity to comment on the proposed changes. The proposed changes will require the addition of new data elements in the AES as well as modifications to current data elements. The fields that will be added/modified are conditional data elements. Therefore, these data elements will only be required if that element applies to the specific shipment being exported. In addition, AES filings will be mandatory for shipments of all used self-propelled vehicles and household goods regardless of value or country of destination.

The additional data elements include name and address of the end user, and ultimate consignee type. The addition of these conditional fields will support the export control initiative of enforcement agencies by helping to detect and prevent the export of items by unauthorized parties or to unauthorized destinations or end users. However, these conditional data elements will have limited impact on burden response time since entering information for the end user and consignee type is based on the knowledge the exporter has at the time of export. Therefore, if that information is not known, the filer is not required to report the information.

Additional data elements that will be included are license applicant address, license value, and country of origin. Also, the equipment number field will be revised to require the container number for all containerized cargo. For shipments where a license is required, the address of the license applicant will be required to be reported. The license value per commodity classification will be required to be reported in addition to the value that is currently captured in the AES. Currently, only six percent of records filed require a license. For shipments where the origin of the commodity is foreign, the country of origin will be required to be reported. Currently, 17 percent of records filed contain goods of foreign origin. For shipments where the method of transportation (MOT) is containerized vessel cargo, the container number will be required to be reported in the equipment number field. Currently, 19 percent of records filed are reported as containerized. Individually, completing these conditional fields will not affect respondent burden significantly. Each additional field affects only a percentage of the shipments that are required to be reported in the AES.

The mandatory requirement to file used self-propelled vehicles as defined in Title 19, CFR, Part 192.1 will increase the number of shipments requiring an AES record by approximately three percent. The increase in required filings for household goods is negligible. This is due to the fact that shipments of household goods have been historically low. Although the number of shipments that will have to be filed will increase slightly, it is critical to capture this information for the purposes of export control under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

Data that will be captured based on these new export reporting requirements are essential in compiling complete and accurate export statistics, as well as strengthening export controls. In spite of new filing requirements, the overall time per response will remain at 3 minutes per AES filing. The additional time required to complete the AES record is offset by technological advances made to the AES along with filers' heightened knowledge of the filing requirements and system functionality since the implementation of mandatory electronic filing in 2008.

II. Method of Collection

An electronic AES record is required, with certain exceptions, for all export shipments valued more than $2,500 per Schedule B from the United States, including Foreign Trade Zones located therein, Puerto Rico, and the U.S. Virgin Islands to foreign countries; for exports between the United States and Puerto Rico; and for exports to the U.S. Virgin Islands from the United States or Puerto Rico. The AES record is required for the export of rough diamonds and all exports requiring a license from any other government agency or license exemption from the Department of State, regardless of value. The AES record is also required for exports with a license exception from the Bureau of Industry and Security when valued over $2,500 per Schedule B. The AES program is unique among Census Bureau statistical collections since it is not sent to respondents to solicit responses, as is the case with surveys. Filing export information via the AES is a mandatory process under Title 13, Chapter 9, U.S.C. Exporters can access the AES via the Census Bureau's free Internet-based system, AES*Direct,* or they can integrate the AES into their company's computer network and file directly with the U.S. Customs and Border Protection (CBP).

For exports to Canada, a Memorandum of Understanding (MOU) signed by the CBP, Canada Border Services Agency, and statistical agencies in the United States and Canada enables the United States to substitute Canadian import statistics for U.S. export statistics. Similarly, in accordance with the MOU, Canada substitutes U.S. import statistics for Canadian exports to the United States. This exchange of data eliminates the requirement for U.S. exporters to file any information with the U.S. Government for exports of nonlicensed shipments to Canada, thus resulting in the elimination of over nine million AES records annually. Export shipments to Canada of rough diamonds, used vehicles, household goods or those that require a license must be filed through the AES. Also, export shipments from the United States through Canada destined to a country other than Canada require an AES record.

U.S. principal parties in interest (USPPI) or authorized agents file electronic export information via the AES prior to the export of the shipment. The proof of filing citation received from the AES must be noted on the commercial loading documents upon arrival of the shipment at the port of export. In instances where the AES filing is not required, the proper exemption legend must be noted on the commercial loading documents.

The AES enables the government to significantly improve the quality, timeliness, and coverage of export statistics. Since July 1995, the Census Bureau and the CBP have utilized the AES to improve the reporting of export trade information, customer service, compliance with and enforcement of export laws, and provide paperless reports of export information. The AES also enables the U.S. Government to increase its ability to prevent the export of certain items by unauthorized parties, to unauthorized destinations and end users through electronic filing.

III. Data

OMB Control Number: 0607–0152.

Form Number: Automated Export System (AES) submissions.

Type of Review: Regular submission.

Affected Public: Exporters, Forwarding agents, Export Carriers.

Estimated Number of Respondents: 288,747.

Estimated Time per Response: 3 minutes for AES Submission.

Estimated Total Annual Burden Hours: 791,607.

Estimated Total Annual Cost: $14,185,597.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Chapter 9; Public Law 107–228 Foreign Relations Authorization Act.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 19, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1321 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Certification Requirements for NOAA's Hydrographic Product Quality Assurance Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 25, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David B. Enabnit, (301) 713–2770 x132, *Dave.Enabnit@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a regular submission (extension) of a currently approved information collection.

The National Oceanic and Atmospheric Administration (NOAA) was mandated to develop and implement a quality assurance program under which the Administrator may certify privately-made hydrographic products. The Administrator fulfilled this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification is awarded or denied. These procedures are now 15 CFR part 996. The application and recordkeeping requirements at 15 CFR part 996 are basis for this collection of information.

II. Method of Collection

Respondents have a choice of making application using either electronic or paper means. Methods of submittal include e-mail of documents, and mail and facsimile transmission of paper documents described in 15 CFR part 996.

III. Data

OMB Control Number: 0648–0507.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Response: 4 hours to prepare the initial application; 4 hours for documentation to accompany an item submitted for certification; and 4 hours for a request for reconsideration of a NOAA decision.

Estimated Total Annual Burden Hours: 12.

Estimated Total Annual Cost to Public: $1.32.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 19, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1372 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA165

Marine Mammals; File No. 15510

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jennifer Burns, Ph.D., University of Alaska Anchorage, Biology Department, 3101 Science Circle, Anchorage, AK, has applied in due form for a permit to receive, import, and export marine mammal parts for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 23, 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. 15510 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 "File No. 15510" in the subject line of the e-mail 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: Amy Sloan or Laura Morse, (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.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to obtain samples from up to 50 animals annually of each of the following species: Harp seal, *Pagophilus groenlandica;* hooded seal, *Cystophora cristata;* gray seal, *Halichoerus grypus;* bearded seal, *Erignathus barbatus;* ringed seal, *Phoca hispida;* harbor seal, *Phoca vitulina;* spotted seal, *Phoca largha;* and ribbon seal, *Phoca fasciata.* The applicant also proposes to import samples annually from up to 6 captive Northern fur seals, *Callorhinus ursinus;* and 6 captive Steller Sea lions, *Eumetopias jubatus.* Samples will be from animals taken for subsistence harvest in Alaska, and taken during scientific and/or subsistence collections including but not limited to the national waters of Canada, Norway, and the United Kingdom, and in international waters. Samples may be received, imported and exported from any country worldwide over a five-year period. The purpose of the proposed research is to study the physiological development of pinnipeds including the development of thermoregulation, muscle performance characteristics, tissue oxygen stores, and hormonal and other regulatory factors in tissues.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made 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: January 19, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1359 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA170

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic 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 South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee's (SSC) Social and Economic Subpanel to review the Gulf of Mexico Red Grouper Evaluation, review draft Regulatory Amendment 9 to the Snapper Grouper Fishery Management Plan for the South Atlantic addressing commercial trip limits, discuss snapper grouper and golden crab draft catch share amendments, discuss the development of annual advisory panel reports, and discuss methodologies for predicting future catch levels for use in amendment analyses. The meeting will be held in North Charleston, SC. *See* **SUPPLEMENTARY INFORMATION.**

DATES: The meeting will be held February 15–16, 2011. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Crowne Plaza, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (1–877) 747–7301 or (843) 744–4422; fax: (843) 740–7029.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC Social and Economic Subpanel will review and discuss social and economic analyses and provide recommendations to the Council regarding those analyses.

SAFMC SSC Social and Economic Subpanel Meeting Schedule:

February 15, 2011: 9 a.m.–5 p.m. and February 16, 2011: 9 a.m.–1 p.m.

The SSC's Social and Economics Panel members will provide the SSC with a report regarding their guidance on the agenda items discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: January 19, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1341 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA131

National Saltwater Angler Registry Program

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

ACTION: Notice.

SUMMARY: NMFS has designated the States of Maine, Florida and Louisiana as exempted States for anglers, spear fishers and for-hire fishing vessels. NMFS has designated the States of Massachusetts, Maryland and Virginia as exempted States for anglers and spear fishers.

DATES: The designation of the States as exempted States is effective on January 24, 2011.

ADDRESSES: Gordon C. Colvin, Fishery Biologist, NMFS ST–12453, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gordon C. Colvin, Fishery Biologist; (301) 713–2367 x175; e-mail: *Gordon.Colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The final rule implementing the National Saltwater Angler Registry Program, 50 CFR part 600 subpart P, was published in the **Federal Register** on December 30, 2008. The final rule requires persons who are angling, spear fishing or operating a for-hire fishing vessel in the U.S. Exclusive Economic Zone or for anadromous species to register annually with NOAA. However, persons who are licensed or registered by, or State residents who are not required to register or hold a license issued by, a State that is designated as an exempted State are not required to register with NOAA. The final rule sets forth the requirements for States to be designated as exempted States. Generally, exempted States must agree to provide to NMFS names, addresses, dates of birth and telephone numbers of the persons licensed or registered under a qualifying State license and/or registry program, or to provide catch and effort data from a qualifying regional survey of recreational fishing, and enter into a Memorandum of Agreement with NMFS to formalize the data reporting agreement.

NMFS has received proposals for providing license/registry data from the States listed below, has determined that the States' programs qualify for exempted State designation under the provisions of the final rule, and has entered into Memoranda of Agreement with each of the States. Therefore, pursuant to 50 CFR 600.1415(b)(3), notice is hereby given that the following States are designated as exempted States under 50 CFR 600.1415: Maine, Florida, and Louisiana. Persons who hold a valid fishing license or registration issued by these exempted States for angling, spear fishing or operating a for-hire fishing vessel in tidal waters are not required to register with NOAA under 50 CFR 600.1405(b). Persons who are residents of these exempted States who are not required to hold a fishing license, or to be registered to fish under the laws of these exempted States, also are not required to register with NOAA. Further, pursuant to 50 CFR 600.1415(b)(3), notice is hereby given that the following States are designated as exempted States only for anglers and spear fishers: Massachusetts, Maryland, and Virginia. Massachusetts, Maryland, and Virginia were previously designated as exempted States for for-hire fishing vessels. Persons who hold a valid license or registration issued by these exempted States for angling or spear fishing in tidal waters are not required to register with NOAA under 50 CFR 600.1405(b). Persons who are residents of these exempted States who are not required to hold a fishing license, or to be registered to fish under the laws of these exempted STATEs, also are not required to register with NOAA.

Dated: January 18, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–1368 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA157

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Exploration Drilling Programs in the Chukchi and Beaufort Seas, AK

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

ACTION: Notice; non-issuance of incidental harassment authorizations.

SUMMARY: On April 19, 2010, and May 7, 2010, NMFS published notices of proposed Incidental Harassment Authorizations (IHAs) for the take of small numbers of marine mammals, by harassment, by Shell Offshore Inc. (Shell) incidental to offshore exploration drilling on Outer Continental Shelf (OCS) leases in the Beaufort and Chukchi Seas, Alaska, during July through October, 2010. Notice is hereby given that these IHAs were not issued, and Shell did not conduct the proposed exploration drilling programs in 2010.

ADDRESSES: The applications related to this action are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here, or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, NMFS, 301–713–2289 ext. 156.

SUPPLEMENTARY INFORMATION: On March 18, 2010, and April 14, 2010, NMFS received revised IHA applications from Shell requesting the take of several species of marine mammals, by Level B harassment, incidental to conducting an exploration drilling program on OCS leases in Camden Bay, Beaufort Sea, Alaska, and offshore OCS leases in the Chukchi Sea, respectively, during the 2010 open-water season. NMFS published notices of proposed IHA along with 30-day public comment periods in the **Federal Register** on April 19, 2010 (74 FR 20482) for the Beaufort Sea request and May 7, 2010 (74 FR 25730) for the Chukchi Sea request.

On May 27, 2010, following the April 20, 2010, Deepwater Horizon oil spill in the Gulf of Mexico, the Department of the Interior (DOI) announced a suspension of proposed exploration drilling in the U.S. Arctic and that DOI would postpone consideration of Shell's exploration drilling requests for the 2010 open-water season. Since no permits were issued to Shell by DOI to conduct the exploration drilling programs during the 2010 open-water season, NMFS did not issue IHAs to Shell for these two proposed programs.

In November 2010, Shell sent two letters to NMFS regarding the 2010 IHA requests. Regarding the proposed Beaufort Sea program, Shell indicated that they intend to move forward with the exploration drilling program in Camden Bay during the 2011 open-water season. Therefore, Shell requested that NMFS continue processing the pending 2010 IHA request. NMFS has requested additional information from Shell. Until this information is received, NMFS cannot consider the 2011 IHA request complete. Once a completeness determination is made for the Beaufort Sea exploration drilling program, NMFS will proceed with publication of a new notice of proposed IHA and request for public comments.

Regarding the proposed Chukchi Sea program, Shell indicated that because of ongoing litigation with the Chukchi Sea Lease Sale 193 planning area, they have had to defer their Chukchi Sea Exploration Plan. Therefore, Shell requested that NMFS suspend further consideration and action of Shell's Chukchi Sea program. Shell will inform NMFS at such time that they intend to move forward with their Chukchi Sea exploration drilling program. If and when Shell informs NMFS that their

Chukchi Sea program is moving forward, NMFS will ensure that it has a complete application before publishing a new notice of proposed IHA.

Dated: January 18, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1357 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Trademark Trial and Appeal Board (TTAB) Actions.

Form Number(s): PTO 2120, 2151, 2153, and 2188 through 2190.

Agency Approval Number: 0651–0040.

Type of Request: Revision of a currently approved collection.

Burden: 14,423 hours annually.

Number of Respondents: 71,743 responses per year, with an estimated 61,900 responses filed electronically.

Avg. Hours per Response: The USPTO estimates that it will take the public between 10 to 30 minutes (0.17 to 0.50 hours) to provide this information, depending upon the request. This includes the time to gather the necessary information, prepare the petitions, notices, extensions, or additional papers, and submit the completed request to the USPTO. The USPTO estimates that it will take the same amount of time (and possibly less time) to gather the necessary information, prepare the submission, and submit it electronically as it does to submit the information in paper form.

Needs and Uses: Individuals or entities who believe that they would be damaged by the registration of a mark may file an opposition to the registration of that mark, or an extension of time to file an opposition, under Section 13 of the Trademark Act, 15 U.S.C. 1063. If a mark is successfully opposed, registration will not take place. Section 14 of the Trademark Act, 15 U.S.C. 1064, allows individuals and entities, who believe that they are or will be damaged by the registration of a mark, to file a petition to cancel the registration of that mark.

Individuals or entities may file an appeal from any final decision of the Trademark Examining Attorney assigned to review an application for registration of a mark under Section 20 of the Trademark Act, 15 U.S.C. 1070.

These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register as the issue may be presented in such cases.

There are no paper forms associated with this collection. However, this collection does contain two suggested formats and six electronic forms that are available through the Electronic System for Trademark Trials and Appeals (ESTTA).

Affected Public: Businesses, other for-profits, and non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0040 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 23, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 19, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–1343 Filed 1–21–11; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 4, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–1522 Filed 1–20–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled two meetings for the following dates:

February 11, 2011 at 9:30 a.m.

February 24, 2011 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled these meetings to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–1519 Filed 1–20–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 11, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–1523 Filed 1–20–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 25, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–1525 Filed 1–20–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 18, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–1524 Filed 1–20–11; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 23, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 14, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: NEW.

Title of Collection: Application for Grants under the Educational Opportunity Centers Program.

OMB Control Number: 1840–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: Once every four years.

Affected Public: Private Sector; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 410.

Total Estimated Annual Burden Hours: 10,020.

Abstract: The Department of Education is requesting a new application for grants under the Educational Opportunity Centers (EOC) Program. The Department is requesting a new application because of the implementation of the Higher Education Opportunity Act (HEOA) revisions to the Higher Education Act, the authorizing statute for the program. Beginning next year and pending a final rule, all new and continuing grantees will submit performance data consistent with the changes made by the HEOA. This application will be used to award new grants and collect data under the EOC program. The EOC Program provides grants to institutions of higher education, public and private agencies and organizations, community-based organization with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools. The EOC Program provides grants to projects designed to provide information regarding financial and

academic assistance available to individuals who desire to pursue a program of postsecondary education; provide assistance to individuals in applying for admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers, and provide information regarding financial and economic literacy to participants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4414. 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. 2011–1354 Filed 1–21–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 23, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 19, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: 2011–12 National Postsecondary Student Aid Study (NPSAS:12) Field Test Student Data Collection.

OMB Control Number: 1850–0666.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 4,093.

Total Estimated Annual Burden Hours: 4,256.

Abstract: National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance education beyond high school, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. This submission is for collection of student data in the eighth cycle in the series, NPSAS:12, and supplements the recently obtained approval for NPSAS:12 collection of institutional data (OMB# 1850–0666 v.7). NPSAS:12 will also serve as the base year study for the Beginning Postsecondary Students Longitudinal Study (BPS) of first-time postsecondary students that will focus on issues of persistence, degree attainment, and employment outcome. Following the field test study in 2011, NCES will submit an OMB clearance package for the full scale. The NPSAS:12 field test sample will include about 300 institutions (full-scale sample about 1,670) and about 4,500 students (120,000 full-scale). Institution contacting for the field test begun in September 2010 (for full scale in September 2011), list collection will be conducted January through May 2011 (full-scale January through June 2012), and student data collection will take place March through June 2011 (full scale January through September 2012). Changes since the last NPSAS collection in 2008 include a new cohort of the BPS which will conduct follow-up studies in 2014 and 2017, and revised strata for institution sampling to reflect the recent growth in enrollment in for-profit 4-year institutions. This submission requests approval for conducting student interviews, collecting student records, and file matching for NPSAS:12 as part of the 2011 field test and a 60-day **Federal Register** public notice waiver for the 2012 full-scale study.

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 4393. 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. 2011–1355 Filed 1–21–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611–005]

Verdant Power, LLC (Verdant); Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

January 13, 2011.

Take notice that the following hydrokinetic pilot project license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Pilot License.

b. *Project No.:* 12611–005.

c. *Date Filed:* December 29, 2010.

d. *Applicant:* Verdant Power, LLC (Verdant).

e. *Name of Project:* Roosevelt Island Tidal Energy (RITE) Project.

f. *Location:* The proposed project would be located on the East River in New York City, New York. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–828(c).

h. *Applicant Contact:* Ronald F. Smith, Verdant Power, LLC, The Octagon, 888 Main Street, New York, NY 10044; telephone (212) 888–8887 (extension 601).

i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The primary project facilities would include: (1) Three 35-kilowatt (kW), 5-meter-diameter axial flow Kinetic System turbine generator units mounted on a single triframe mount, with a total installed capacity of 105 kW, in Phase 1; (2) nine additional 5-meter-diameter axial flow Kinetic System turbine generator units mounted on three triframe mounts, with a total installed capacity of 420 kW, in Phase 2; (3) eighteen additional 5-meter-diameter axial flow Kinetic System turbine generator units mounted on six triframe mounts, with a total installed capacity of 1,050 kW, in Phase 3; (4) 480-volt underwater cables from each turbine to five shoreline switchgear vaults that would interconnect to a control room and interconnection points; and (5) appurtenant facilities for navigation safety and operation. The project is estimated to have an annual generation of between 1,680 and 2,400 megawatt-hours.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of requested additional information	January 28, 2011.
Commission issues REA notice	February 2, 2011.
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	March 4, 2011.
Commission issues Single EA	May 3, 2011.
Comments on EA	June 2, 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1286 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2713–082]

Erie Boulevard Hydropower, L.P.; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

January 13, 2011.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2713–082.

c. *Date Filed:* December 30, 2010.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oswegatchie River Hydroelectric Project.

f. *Location:* The existing multi-development project is located on the Oswegatchie River in St. Lawrence County, New York. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jon Elmer, Erie Boulevard Hydropower, L.P, 800 Starbuck Ave., Suite 802, Watertown, New York 13601, (315) 779–2401.

i. *FERC Contact:* John Baummer, (202) 502–6837 or *john.baummer@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Oswegatchie River Hydroelectric Project consists of six developments with an installed capacity of 30.32 megawatts (MW) and an average annual generation of 123,769 megawatt-hours. The six developments,

listed from upstream to downstream, include:

Browns Falls

The existing Browns Falls Development is located at river mile 96.9 of the Oswegatchie River and consists of: (1) A 941-foot-long dam with a 192-foot-long, 69-foot-high concrete gravity spillway with a crest elevation of 1,347.0 feet above mean sea level (msl) and equipped with 2-foot-high seasonal flash boards; (2) a 168-acre reservoir with a gross storage capacity of 3,234 acre-feet and a normal maximum pool elevation of 1349.0 feet msl; (3) a 62-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (4) a 12-foot-diameter, 6,000-foot-long steel pipeline; (5) a 70-foot-high surge tank; (6) two 8-foot-diameter, 142-foot-long steel penstocks; (7) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 16 MW; (8) a 123-foot-long, 6.6-kilovolt (kV) transmission line; and (9) appurtenant facilities.

The steel pipeline, penstocks, and powerhouse bypass about 7,500 feet of the Oswegatchie River.

Flat Rock

The existing Flat Rock Development is located at river mile 95.5 of the Oswegatchie River and consists of: (1) A 568-foot-long dam and a 120-foot-long earthen embankment with a concrete core wall, and a 229-foot-long, 70-foot-high concrete gravity spillway with a crest elevation of 1,080.0 feet msl; (2) a 159-acre reservoir with a gross storage capacity of 2,646 acre-feet and a normal maximum pool elevation of 1,080.0 feet msl; (3) a 66-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (4) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 5 MW; (5) a 30-foot-long, 2.4-kV transmission line; and (6) appurtenant facilities.

South Edwards

The existing South Edwards Development is located at river mile 87.1 of the Oswegatchie River and consists of: (1) A 200-foot-long dam with a 88-foot-long, 48-foot-high concrete gravity spillway with a crest elevation of 843.2 feet msl and mounted with 2-foot-high seasonal flash boards; (2) 510-foot-long and 240-foot-long earthen dikes located along the south bank of the reservoir, with a concrete core walls and partially equipped with 10-inch-high flashboards; (3) a 79.2-acre reservoir with a gross storage capacity of 1,003 acre-feet and a normal maximum pool elevation of 845.2 feet msl; (4) a 46-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (5) a 10-foot-diameter, 1,106-foot-long fiberglass pipeline; (6) a 51-foot-high surge tank; (7) a submersible minimum-flow turbine-generator unit connected to the fiberglass pipeline, and a powerhouse containing three turbines directly connected to three generating units for a total installed capacity of 3.46 MW; (8) 75-foot-long, 480-volt and 3,917-foot-long, 2.4-kV transmission lines; and (9) appurtenant facilities.

The pipeline and powerhouse bypass about 1,500 feet of the Oswegatchie River.

Oswegatchie

The Oswegatchie Development is located at river mile 86.6 of the Oswegatchie River and consists of: (1) A 160-foot-long dam with an 80-foot-long, 12-foot-high concrete gravity spillway with a crest elevation of 758.6 feet msl and equipped with a 10-foot-wide notch; (2) a 6-acre reservoir with a gross storage capacity of 23 acre-feet and a normal maximum pool elevation of 758.6 feet msl; (3) a 50-foot-long gated intake structure equipped with a trashrack with 1-inch clear bar spacing; (4) two 6.5-foot-diameter, 90-foot-long steel penstocks; (5) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 2 MW; (6) a 2,227-foot-long, 2.4-kV transmission line; and (7) appurtenant facilities.

The penstocks and powerhouse bypass about 350 feet of the Oswegatchie River.

Heuvelton

The Heuvelton Development is located at river mile 12 of the Oswegatchie River and consists of: (1) A 285-foot-long, 19-foot-high concrete gravity dam with a crest elevation of 276.5 feet msl and equipped with two 10.9-foot-high inflatable rubber bladder gates and four 10.5-foot-high tainter gates; (2) a 239-acre reservoir with a gross storage capacity of 405 acre-feet and a normal maximum pool elevation of 286.2 feet msl; (3) a 70-foot-long gated intake structure equipped with a trashracks with 3.5-inch clear bar spacing; (4) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 0.96 MW; (5) a 62-foot-long, 2.4-kV transmission line; and (6) appurtenant facilities.

Eel Weir

The Eel Weir Development is located at river mile 5.1 of the Oswegatchie River and consists of: (1) A 1,012-foot-long dam with a short earthen embankment and a 744-foot-long, 26-foot-high Ambursen spillway with a crest elevation of 272.0 feet msl; (2) a 96-acre reservoir with a gross storage capacity of 136.0 acre-feet and a normal maximum pool elevation of 272.0 feet msl; (3) a 117-foot-long gated intake structure equipped with a trashrack with 3.5-inch clear bar spacing; (4) a powerhouse containing three turbines directly connected to three generating units for a total installed capacity of 2.9 MW; (5) a 127-foot-long, 2.4-kV transmission line; and (6) appurtenant facilities.

The Browns Falls, Flat Rock, South Edwards, and Oswegatchie developments operate to meet peak demands for hydroelectric generation, while the Heuvelton and Eel Weir developments typically operate in a run-of-river mode. With the exception of the Oswegatchie Development, the current license does not restrict impoundment fluctuations. The Oswegatchie Development operates with a maximum drawdown of 0.4 feet on the impoundment.

The existing minimum flow requirements for the project include: 30 cubic feet per second (cfs) between April 1 and September 30, and 15 cfs between October 1 and May 31 in the Browns Falls bypassed reach; 60 and 40 cfs year-round in the South Edwards and Oswegatchie bypassed reaches, respectively; 160 cfs (or inflow, whichever is less) year-round in the Flat Rock, South Edwards, and Oswegatchie tailraces, respectively; and 275 and 325 cfs (or inflow, whichever is less) year-round in the Heuvelton and Eel Weir tailraces, respectively.

The applicant, concerned agencies, and non-governmental organizations are currently discussing a settlement agreement that would require Erie Boulevard Hydropower to implement various environmental enhancement measures at the project developments.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY,

(202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/ Notice of Ready for Environmental Analysis.	February 28, 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	April 28, 2011
Commission issues EA	August 2011.
Comments on EA	September 2011.
Modified terms and conditions.	November 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1285 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13948–000]

Public Utility No. 1 of Snohomish County; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 14, 2011.

On December 20, 2010, the Public Utility No. 1 of Snohomish County, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Calligan Creek Hydroelectric Project (project) to be located on Calligan Creek, near North Bend in King County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 8-foot-high, 60-foot-long diversion weir and intake structure; (2) an impoundment having a total storage capacity of one acre-foot at a normal maximum operating elevation of 2,221 feet mean sea level; (3) a 6,288-foot-long, 38-inch-diameter buried pressure penstock; (4) a 2,600-square-foot powerhouse containing a single turbine/generator unit with an installed capacity of 6.0 megawatts; (5) a 148-foot-long, 10-foot-wide rip-rap open channel tailrace; (6) a switchyard containing a 4.16/34.5 three-phase step-up transformer; (7) a 13,200-foot-long, 34.5 kilovolt three-phase buried transmission line and (8) appurtenant facilities. The estimated annual generation of the project would be 20,717.8 megawatt-hours.

Applicant Contact: Mr. Kim D. Moore, Assistant General Manager of Generation Resources; Public Utility No. 1 of Snohomish County; 2320 California Street; Everett, WA 98201; phone: 425–783–8606.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13948–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1281 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 18, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP06–298–013.
Applicants: Public Service Commission of New York v.
Description: Semi-Annual Report of Operational Sales of Gas for the period of 07/01/10–12/21/10 of National Fuel Gas Supply Corporation.
Filed Date: 01/13/2011.
Accession Number: 20110113–5071.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 25, 2011.

Docket Numbers: RP10–778–002.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, L.L.C. submits tariff filing per 154.203: Baseline Compliance Filing to be effective 6/30/2010.
Filed Date: 01/13/2011.
Accession Number: 20110113–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 25, 2011.

Docket Numbers: RP11–1605–001.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.203: OFO Compliance Filing (2) to be effective 1/8/2011.
Filed Date: 01/13/2011.
Accession Number: 20110113–5123.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 25, 2011.

Docket Numbers: RP10–1371–001.
Applicants: Caledonia Energy Partners, L.L.C.
Description: Caledonia Energy Partners, L.L.C. submits tariff filing per 154.203: Caledonia Energy Partners Baseline Tariff to be effective 9/30/2010.
Filed Date: 01/14/2011.
Accession Number: 20110114–5149.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 26, 2011.

Docket Numbers: RP10–669–002.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline LLC submits tariff filing per 154.203: Order No. 714 Baseline Compliance Filing to be effective 2/14/2011.

Filed Date: 01/14/2011.

Accession Number: 20110114–5049.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 26, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1293 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 13, 2011.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–36–000.

Applicants: BP Wind Energy North America Inc., Dominion Fowler Ridge Wind II, LLC.

Description: Application of BP Wind Energy North America Inc. and Dominion Fowler Ridge Wind II, LLC, for Transaction Approval Pursuant to Federal Power Action Section 203.

Filed Date: 01/13/2011.

Accession Number: 20110113–5052.

Comment Date: 5 p.m. Eastern Time on Thursday, February 3, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–45–000.

Applicants: Elk Wind Energy LLC.

Description: Self-Certification of EG or FC of Elk Wind Energy LLC.

Filed Date: 01/13/2011.

Accession Number: 20110113–5021.

Comment Date: 5 p.m. Eastern Time on Thursday, February 3, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1178–015; ER09–838–001.

Applicants: Gila River Power LP, Entegra Power Services LLC.

Description: Second Supplement to Updated Market Power Analysis for Continued Market-Based Rate Authority in Compliance with Order No. 697.

Filed Date: 01/12/2011.

Accession Number: 20110112–5155.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER08–836–002; ER10–3049–001; ER10–3051–001.

Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.

Description: Substitute Notice of Change in Status of Champion Energy Marketing, LLC, *et al.*

Filed Date: 01/12/2011.

Accession Number: 20110112–5145.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER10–1790–001; ER11–2029–002; ER10–1821–002; ER10–2598–001.

Applicants: BP Energy Company, Rolling Thunder I Power Partners, LLC, Goshen Phase II LLC, Cedar Creek II, LLC.

Description: Supplemental Information of Rolling Thunder I Power Partners, LLC.

Filed Date: 01/12/2011.

Accession Number: 20110112–5154.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–93–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): G252 Amendment Filing (2) (1–12–11) to be effective 10/14/2010.

Filed Date: 01/12/2011.

Accession Number: 20110112–5046.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2010–000.

Applicants: J.D. Wind 4, LLC.

Description: J.D. Wind 4, LLC submits tariff filing per 35.12: Market-Based Rate Baseline Filing to be effective 11/1/2010.

Filed Date: 11/02/2010.

Accession Number: 20101102–5110.

Comment Date: 5 p.m. Eastern Time on Monday, January 24, 2011.

Docket Numbers: ER10–2487–001.

Applicants: Pacific Summit Energy LLC.

Description: Pacific Summit Energy LLC submits tariff filing per 35: Pacific Summit Supplemental Baseline Tariff to be effective 8/31/2010.

Filed Date: 01/12/2011.

Accession Number: 20110112–5143.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2030–001.

Applicants: Hinson Power Company, LLC.

Description: Hinson Power Company, LLC submits tariff filing per 35: Hinson Baseline Tariff Compliance Filing to be effective 11/3/2010.

Filed Date: 01/12/2011.

Accession Number: 20110112–5096.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2153–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.17(b): BPA Cooperative Communications Agreement Amended Filing to be effective 10/1/2010.

Filed Date: 01/12/2011.

Accession Number: 20110112–5090.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2195–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): R23 Amendment (2) to be effective 11/30/2010.

Filed Date: 01/12/2011.

Accession Number: 20110112–5059.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2501–001.

Applicants: Rolling Thunder I Power Partners, LLC.

Description: Rolling Thunder I Power Partners, LLC submits tariff filing per

35.17(b): MBR Tariff Filing of Rolling Thunder I Power Partners, LLC to be effective 3/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5142.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2670–000.

Applicants: Occidental Chemical Corporation.

Description: Occidental Chemical Corporation submits tariff filing per 35.13(a)(2)(iii: Revised Market-Based Rate Tariff to be effective 1/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5060.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2671–000.

Applicants: Fore River Development, LLC.

Description: Fore River Development, LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 1/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5108.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2672–000.

Applicants: Mystic I, LLC.

Description: Mystic I, LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 1/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5116.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2673–000.

Applicants: Boston Generating, LLC.

Description: Boston Generating, LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 1/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5122.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2674–000.

Applicants: Mystic Development, LLC.

Description: Mystic Development, LLC submits tariff filing per 35.15: Notice of Succession to be effective 1/13/2011.

Filed Date: 01/12/2011.

Accession Number: 20110112–5141.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: ER11–2677–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1617R2 Kansas Power Pool NITSA and NOA (formerly Docket No. ER10–1697) to be effective 7/30/2010.

Filed Date: 01/13/2011.

Accession Number: 20110113–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, February 3, 2011.

Docket Numbers: ER11–2678–000.

Applicants: PJM Interconnection, L.L.C., The Potomac Edison Company.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Amended and Restated ISA No. 2524 between Potomac Edison Co. and Old Dominion to be effective 1/1/2011.

Filed Date: 01/13/2011.

Accession Number: 20110113–5057.

Comment Date: 5 p.m. Eastern Time on Thursday, February 3, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–4–000.

Applicants: Entergy Louisiana, LLC.

Description: Amendment to Application for Authorization to consent to Borrowing in connection with Nuclear Fuel Lease and Request for Waiver of Competitive Bidding Requirements of Entergy Louisiana, LLC.

Filed Date: 01/12/2011.

Accession Number: 20110112–5160.

Comment Date: 5 p.m. Eastern Time on Monday, January 24, 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. 2011–1310 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 13, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1001–001.

Applicants: Tres Palacios Gas Storage LLC.

Description: Tres Palacios Gas Storage LLC submits tariff filing per 154.203: Tres Palacios Gas Storage—Address Change to be effective 2/7/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 19, 2011.

Docket Numbers: RP10–1404–001.

Applicants: High Island Offshore System, L.L.C.

Description: High Island Offshore System, L.L.C. submits tariff filing per 154.203: Baseline Compliance Filing to be effective 9/30/2010.

Filed Date: 01/13/2011.

Accession Number: 20110113–5024.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 25, 2011.

Docket Numbers: RP11–1580–001.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.203: Capacity Release Rewrite Compliance Filing to be effective 1/1/2011.

Filed Date: 01/13/2011.

Accession Number: 20110113–5022.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 25, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1292 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–2–000]

Smart Grid Interoperability Standards; Supplemental Notice of Technical Conference

January 13, 2011.

On December 21, 2010, the Federal Energy Regulatory Commission announced that a Technical Conference on Smart Grid Interoperability Standards will be held on Monday, January 31, 2011, beginning at 1 p.m. (EST). The staff-led conference will be held in the Commission Meeting Room at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

As described in the earlier notice, the purpose of the technical conference is to obtain further information to aid the Commission's determination of whether there is "sufficient consensus" that the five families of standards posted by the National Institute of Standards and Technology are ready for Commission consideration in a rulemaking proceeding, as directed by section 1305(d) of the Energy Independence and Security Act of 2007.

Attached to this supplemental notice is an agenda for the conference. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov.*

The conference will be Webcast. Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events on the Commission's web site and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

A transcript of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee.

All interested parties are invited to file written comments on or before March 2, 2011 that relate to the issues discussed during the technical conference. Commenters are encouraged to use the questions presented in the attached agenda for the conference to organize their comments. Reply comments may be submitted on or before March 16, 2011.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY); or send a Fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact *Sandra Waldstein at Sandra.Waldstein@ferc.gov* or (202) 502–8092, Ray Palmer at *Ray.Palmer@ferc.gov* or (202) 502–6569, or Annabelle Lee at *Annabelle.Lee@ferc.gov* or (202) 502–8709.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1280 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–80–000]

Washington 10 Storage Corporation; Notice of Filing

January 13, 2011.

Take notice that on January 12, 2011, Washington 10 Storage Corporation filed a revised Statement of Operating Conditions (SOC) to correct typographical errors contained in its January 4, 2011, SOC filing in Docket No. PR11–78–000 as more fully described in the filing.

Any person desiring to participate in this rate filing 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, January 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1287 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–25–000]

ETC Tiger Pipeline, LLC; Notice of Filing

January 13, 2011.

Take notice that on December 30, 2010, ETC Tiger Pipeline, LLC submitted a request for a waiver of the reporting requirement to file the FERC Form 2 for 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1282 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–24–000]

Fayetteville Express Pipeline LLC; Notice of Filing

January 13, 2010.

Take notice that on December 30, 2010, Fayetteville Express Pipeline LLC submitted a request for a waiver of the reporting requirement to file the FERC Form 2 for 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1283 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–32–000]

Central Minnesota Municipal Power Agency, Midwest Municipal Transmission Group; Notice of Filing

January 13, 2011.

Take notice that, on January 11, 2011, Central Minnesota Municipal Power Agency and Midwest Municipal Transmission Group submitted an amendment to a petition for a declaratory order filed on December 31, 2007, as amended on January 25, 2010, in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1284 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–81–000]

The East Ohio Gas Company; Notice of Petition for Rate Approval

January 13, 2011.

Take notice that on January 12, 2011, The East Ohio Gas Company (East Ohio) filed a petition pursuant to section 284.123(b)(1) of the Commission's regulations. East Ohio states that it proposes to update its rates for interstate interruptible transportation service using the currently effective rates approved by the Public Utilities Commission of Ohio for comparable intrastate transportation service; and (2) to update East Ohio's Operating Statement to conform with the terms and conditions applicable to the comparable State-regulated intrastate service.

Any person desiring to participate in this rate filing 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, January 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1288 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Midwest ISO Meetings

January 13, 2011.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Midwest ISO-related meetings during the 2011 year:

- Advisory Committee (10 a.m.–3 p.m., Local Time)
  - January 19
  - February 23 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 16
  - May 18
  - June 15
  - July 20
  - August 17 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 14
  - October 19
  - November 16
  - December 7
- Board of Directors (8:30 a.m.–10 a.m., Local Time)
  - February 24 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - April 14 (Crowne Plaza Hotel, 123 W. Louisiana Street, Indianapolis, IN)
  - June 16
  - August 18 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 20
  - December 8
- Board of Directors Markets Committee (8 a.m.–10 a.m., Local Time)
  - February 23 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 16
  - April 13 (Crowne Plaza Hotel, 123 W. Louisiana Street, Indianapolis, IN)
  - May 18
  - June 15
  - July 20
  - August 17 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 14
  - October 19
  - November 16
  - December 6
- Midwest ISO Informational Forum (3 p.m.–5 p.m., Local Time)
  - January 18
  - February 15
  - March 15
  - April 19
  - May 17
  - June 14
  - July 19
  - August 16 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 13
  - October 18
  - November 15
  - December 13
- Midwest ISO Market Subcommittee (9 a.m.–5 p.m., Local Time)
  - February 1
  - March 1
  - April 5
  - May 3
  - June 7
  - June 28
  - August 2
  - August 30
  - October 4
  - November 1
  - December 6
- Midwest ISO Supply Adequacy Working Group (9 a.m.–5 p.m., Local Time)
  - January 20
  - February 3
  - February 17
  - March 3
  - March 17
  - April 7
  - April 21
  - May 5
  - May 19
  - June 9

- June 30
- August 4
- September 1
- October 6
- November 3
- December 8

• Midwest ISO Regional Expansion Criteria and Benefits Task Force (9 a.m.–5 p.m., Local Time)
- January 25
- February 15
- March 22
- April 26
- May 24
- June 21
- July 26
- August 23
- September 20
- October 25
- November 22
- December 20

Except as noted, all of the meetings above will be held at: Midwest ISO Headquarters, 701 City Center Drive and 720 City Center Drive, Carmel, IN 46032.

Further information may be found at *http://www.midwestiso.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. RM01–5, *Electronic Tariff Filings.*

Docket No. ER02–488, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER02–2595, *et al., Midwest Independent Transmission System Operator, Inc.*

Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket Nos. ER04–458, *et al., Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–6, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–636, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*

Docket No. ER05–1047, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1048, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1083, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–1085, *et al., Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*

Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. EC06–4 and ER06–20, *LGE Energy LLC, et al.*

Docket Nos. ER06–18, *et al., Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–22, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–192, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–360, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–731, *Independent Market Monitor for the Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–866, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–881, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–1420, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–1536, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–1552, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL06–80, *Midwest Independent Transmission System Operator, Inc.*

Docket No. RM06–16, *Mandatory Reliability Standards for Bulk-Power System.*

Docket No. AD07–12, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations.*

Docket No. ER07–53, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–478, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–532, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–580, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–815, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–940, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER07–1141, *International Transmission Co., et al.*

Docket No. ER07–1144, *American Transmission Co. LLC, et al.*

Docket No. ER07–1182, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER07–1233 and ER07–1261, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1372, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1375, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1388, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1417, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL07–44, *Dakota Wind Harvest, LLC* v. *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL07–79, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. EL07–86, EL07–88, EL07–92, *Ameren Services Co., et al.* v. *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. OA07–57, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. RR07–2, *et al., Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization, et al.*
Docket No. EL08–32, *Central Minnesota Municipal Power Agency and Midwest Municipal Transmission Group, Inc.*
Docket No. ER08–15, *Midwest ISO Transmission Owners.*
Docket No. ER08–55, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER08–109, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER08–185 and ER08–186, *Ameren Energy Marketing Company, et al.*
Docket No. ER08–207, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–209, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–269, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–296, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–320, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–370, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–394, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–404, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–416, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–622, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–637, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–925, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1043, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1074, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1169, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1244, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1252, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1285, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1309, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1370, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1399, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1400, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1401, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1404, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1435, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1485, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1486, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1505, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–4, *Midwest ISO Transmission Owners, et al.*
Docket No. OA08–14, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–42, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–106, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA09–7, *Midwest Independent Transmission System Operator, Inc.*
Docket No. RM08–19, *Mandatory Reliability Standards for the Calculation of Available Transfer, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System.*
Docket No. AD09–10, *National Action Plan on Demand Response.*
Docket No. AD09–15, *Version One Regional Reliability Standard for Resource and Demand Balancing.*
Docket No. EL09–71, *Resale Power Group of Iowa, WPPI Energy.*
Docket No. ER09–66, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–72, *Xcel Energy Operating Companies.*
Docket No. ER09–91, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–108, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–123, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–245, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–266, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–267, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–403, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–499, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–506, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–512, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–91, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–573, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–592, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–654, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–660, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–769, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–774, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–783, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–785, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–788, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–807, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER09–827, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–839, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–861, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–991, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–994, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–998, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–999, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1049, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1074, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1126, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1369, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1396, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1422, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1432, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1435, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1526, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1543, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1575, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1719, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1727, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1769, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1779, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ES09–54, *Midwest Independent Transmission System Operator, Inc.*
Docket No. AD10–5, *RTO/ISO Performance Metrics.*
Docket No. AD10–14, *Reliability Standards Development and NERC and Regional Entity Enforcement.*
Docket No. EC10–39, *American Transmission Company, LLC.*
Docket No. EF10–3, *Western Area Power Administration.*
Docket No. EL10–41, *Tatanka Wind Power, LLC* v. *Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc.*
Docket No. EL10–45, *Midwest Independent Transmission System Operator, Inc.* v. *PJM Interconnection, LLC.*
Docket No. EL10–46, *Midwest Independent Transmission System Operator, Inc.* v. *PJM Interconnection, LLC.*
Docket No. EL10–60, *PJM Interconnection, LLC* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL10–68, *Resale Power Group of Iowa and WPPI Energy* v. *ITC Midwest LLC and Interstate Power and Light Company.*
Docket No. EL10–77, *City of Pella, Iowa* v. *Midwest Independent Transmission System Operator, Inc. and MidAmerican Energy Company, Inc.*
Docket No. EL10–78, *PJM Interconnection, L.L.C.*
Docket No. ER10–8, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER10–9, 10–73, 10–74, *Dairyland Power Cooperative* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–27, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER10–209, EL10–12, and ER10–640, *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–128, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–224, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–277, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–279, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–316, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–327, *Dynegy Midwest Generation, Inc.*
Docket No. ER10–386, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–394, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–495, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–559, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–563, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–576, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–579, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–582, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–639, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–640, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–685, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–686, *Otter Tail Power Company.*
Docket No. ER10–687, *Midwest Independent Transmission System Operator, Inc. and ALLETE, Inc.*
Docket No. ER10–691, *Duke Energy Indiana, Inc.*
Docket No. ER10–706, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–810, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–839, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–863, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–866, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–867, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–884, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–938, *Duke Energy Corporation.*
Docket No. ER10–953, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–957, *Midwest Independent Transmission System*

Operator, Inc., PJM Interconnection, L.L.C., and Southwest Power Pool, Inc.
Docket No. ER10–962, *Union Electric Company.*
Docket No. ER10–970, *FirstEnergy Solutions Corp.*
Docket No. ER10–978, *Wolverine Power Supply Cooperative, Inc.*
Docket No. ER10–1004, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1007, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1024, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1036, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1069, *Southwest Power Pool, Inc.*
Docket No. ER10–1070, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1071, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1085, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1086, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1098, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1132, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1194, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1244, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1251, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1273, *Joint Pricing Zone Revenue Allocation Agreement between Great River Energy, Central Minnesota Municipal Power Agency, Northern States Power Company and Southern Minnesota Municipal Power Agency.*
Docket No. ER10–1296, *Wisconsin Electric Power Company.*
Docket No. ER10–1301, *Notice of Cancellation of Adjacent Balancing Authority Coordination Agreement between the Midwest ISO and Dairyland Power Cooperative.*
Docket No. ER10–1305, *Xcel Energy Services Inc.*
Docket No. ER10–1349, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1361, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1366, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1377, *Xcel Energy Services, Inc.*
Docket No. ER10–1400, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1413, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1444, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1446, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1463, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1485, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1492, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1552, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1561, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1562, *Duke Energy Ohio, Inc., and Duke Energy Kentucky, Inc.*
Docket No. ER10–1648, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1666, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1649, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1668, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1677, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1696, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1701, *Ameren Services Company as Agent for Illinois Power Company.*
Docket Nos. ER10–1732 and ER10–1733, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners.*
Docket No. ER10–1814, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1913, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1997, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2052, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2072, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2080, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2090, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2283, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2523, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2524, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2540, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–2869, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–3152, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–3180, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–3229, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–15, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–16, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–22, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–28, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–64, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–93, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–99, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–134, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1845, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1851, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1863, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1991, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1967, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1976, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2053, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2059, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2104, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2113, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2123, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2208, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2276, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2277, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2300, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2313, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2334, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2350, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2359, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2360, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2361, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ES10–31, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ES10–35, *Integrys Energy Services, Inc. and Macquarie Cook Power Inc.*
Docket No. PL10–4, *Enforcement of Statutes, Orders, Rules, and Regulations.*
Docket No. RM09–13, *Time Error Correction Reliability Standard.*
Docket No. RM10–9, *Transmission Loading Relief Reliability Standard and Curtailment Priorities.*
Docket No. RM10–11, *Integration of Variable Energy Resources.*
Docket No. RM10–13, *Credit Reforms in Organized Wholesale Electric Markets.*
Docket No. RM10–17 and EL09–68, *Demand Response Compensation in Organized Wholesale Energy Markets.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1311 Filed 1–21–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9255–8]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen (NO_X) and Sulfur Oxides (SO_X) Secondary Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting on February 15 and 16, 2011, of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen (NO_X) and Sulfur Oxides (SO_X) Secondary Review Panel to provide review comments on EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X (January 2011).*

DATES: The CASAC Oxides of Nitrogen and Sulfur Oxides Secondary Review Panel meeting will be held on Tuesday, February 15, 2011 from 9 a.m. to 5 p.m. (Eastern Time) and on Wednesday, February 16, 2011 from 8 a.m. to 10 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Carolina Inn, 211 Pittsboro Street Chapel Hill, NC 27516 (919–933–2001).

FOR FURTHER INFORMATION CONTACT: Any member of the public who want further information concerning the February 15 and 16, 2011 public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; via telephone/voice mail (202) 546–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov*. General information concerning the CASAC and the CASAC documents can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC NO_X and SO_X Secondary NAAQS Review Panel will hold a public meeting to provide review comments on the public welfare implications of standards for NO_X and SO_X. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including NO_X and SO_X. EPA is reviewing public welfare effects associated with NO_X and SO_X which, as defined in the CAA include, but are not limited to, effects on soils, water, wildlife, vegetation, visibility, weather, and climate, as well as effects on materials, economic values, and personal comfort and well-being. The CASAC NO_X and SO_X Secondary NAAQS Review Panel has provided advice and review of EPA's assessments of the secondary NAAQS for NO_X and SO_X since 2008. Information about these activities can be found on the CASAC Web site at *http://yosemite.epa.gov/sab/*

sabproduct.nsf/WebProjectsbyTopic CASAC Open View. On April 1–2, 2010, the CASAC Panel held a meeting at the request of EPA's Office of Air and Radiation to review EPA's draft document entitled *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First External Review Draft (March 2010)* (75 FR 10479–10481). CASAC provided EPA with an advisory report reviewing that draft document on June 22, 2010 [*Review of the Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First Draft (March 2010)* (EPA–CASAC–10–014)], available at *http://yosemite.epa.gov/sab/sabproduct.nsf/33219585C42C55218525777A0 06DE787/$File/EPA-CASAC-10-014-unsigned.pdf.* As noticed in 75 FR 54871–54872, on October 6–7, 2010, the CASAC Panel met to review EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: Second External Review Draft (September 2010).* CASAC transmitted its advisory report reviewing the second draft Policy Assessment on December 9, 2010 [*Review of the Policy Assessment for the Review of the Secondary National Ambient Air Quality Standard for NO_X and SO_X: Second Draft* (EPA–CASAC–11–003)], available at *http://yosemite.epa.gov/sab/sabproduct.nsf/0/0fc13c821ee6181a85257473005ae1ec!OpenDocument&TableRow=2.3#2.* CASAC will meet on February 15 and 16, 2011 to review EPA's final Policy Assessment.

Technical Contacts: Any technical questions concerning the Policy Assessment may be directed to Dr. Richard Scheffe at *scheffe.rich@epa.gov* or 919–541–4650.

Availability of Meeting Materials: The EPA will post the final Policy Assessment at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pa.html.* Prior to the meeting, the agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* To be placed on the public speaker list for the meeting, interested parties should notify Dr. Stallworth, DFO, by e-mail no later than February 7, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the meeting should be received in the SAB Staff Office by February 7, 2011 so that the information may be made available to the Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 13, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–1347 Filed 1–21–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–0002]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Letter of Interest Application (EIB 95–09).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Our customers will be able to submit this form on paper or electronically. The information collected will allow Ex-Im Bank to determine the applicability of a proposed export transaction for receipt of an indication of a willingness to consider financing medium- and long-term guarantee, direct loan and insurance programs.

Form can be viewed at *http://www.exim.gov/pub/pending/EIB95_09.pdf.*

DATES: Comments should be received on or before March 25, 2011 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 95–09. Letter of Interest Application.

OMB Number: 3048–0005.

Type of Review: Regular.

Need and Use: Ex-Im Bank's Letter of Interest (LI) is a pre-export tool to help get financing off to a quick start. The LI is an indication of Ex-Im's willingness to consider financing for a given export transaction. LIs are used during the bidding or negotiating stage of an export sale or before going on a marketing trip.

Ex-Im Bank uses the requested information to determine the applicability of the proposed export transaction for receipt of this indication of willingness to consider financing.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 0.5 hours.

Government Annual Burden Hours: 200.

Frequency of Reporting or Use: On occasion.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–1308 Filed 1–21–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Tuesday, January 25, 2011

January 18, 2011.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Tuesday, January 25, 2011, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	PUBLIC SAFETY AND HOMELAND SECURITY.	TITLE: Service Rules for the 698–746, 747–762 and 777–792 MHz bands (WT Docket No. 06–150); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06–229); and Amendment of Part 90 of the Commission's Rules (WP Docket No. 07–100) SUMMARY: The Commission will consider an Order and Further Notice of Proposed Rulemaking to ensure that the public safety broadband network is interoperable nationwide.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–1502 Filed 1–20–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 18, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10327	Oglethorpe Bank	Brunswick	GA	1/14/2011

[FR Doc. 2011–1312 Filed 1–21–11; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Citizens National Bancshares of Bossier, Inc.,* Bossier City, Louisiana; to acquire 100 percent of the voting shares of Citizens Bankshares of Springhill, Inc., and indirectly acquire voting

shares of Citizens Bank & Trust Company, both in Springhill, Louisiana.

Board of Governors of the Federal Reserve System, January 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–1337 Filed 1–21–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *American State Bancshares, Inc.;* to acquire 100 percent of the voting shares of ASB Holdings, LLC, both in Great Bend, Kansas, and thereby engage in consulting services, pursuant to section 225.28(b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, January 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–1336 Filed 1–21–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2010–0083; Sequence 24; OMB Control No. 9000–0138]

Federal Acquisition Regulation; Submission for OMB Review; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. A notice was published in the **Federal Register** at 75 FR 29547 on May 26, 2010. One comment was received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 23, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0138 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0138" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0138". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0138" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0138.

Instructions: Please submit comments only and cite Information Collection 9000–0138, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA, (202) 501–4770 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of 1994, Public Law 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

The single public comment was not relevant, however, as it did not address the burden statement set forth in the **Federal Register** Notice.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per request for commercial financing and 2 hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for commercial financing is estimated as follows:

Respondents: 1,000.
Responses per Respondent: 5.
Total Responses: 5,000.
Hours per Response: 2.
Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.
Responses per Respondent: 12.
Total Responses: 6,000.
Hours per Response: 2.
Total Burden Hours: 12,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCA), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: January 13, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–1290 Filed 1–21–11; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Docket No. 2011–0006; Sequence 2]

Federal Procurement Data System Product Service Code Manual Update

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This notice announces that the Products and Services Code (PSC) Manual, which provides codes to describe products, services, and research and development purchased by the government, is in the process of being updated; GSA, which maintains the PSC Manual, is in the process of updating the manual.

DATES: *Effective date:* January 24, 2011.

Comment date: A draft of the PSC Manual will be posted at *http://blog.citizen.apps.gov/GSA_PSC_Manual/*. Comments on the draft PSC Manual must be posted at *http://blog.citizen.apps.gov/GSA_PSC_Manual,* "Comments" section, between February 8, 2011 and March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Brooks at *pat.brooks@gsa.gov.*

SUPPLEMENTARY INFORMATION:

The Products and Services Code (PSC) Manual provides codes to describe products, services, and research and development purchased by the government. The codes are one of the data elements reported in the Federal Procurement Data System (FPDS). GSA, which maintains the PSC Manual, is in the process of updating the manual. The changes will include updating the descriptions, adding or deleting codes as necessary, and adding environmental/sustainability attributes required for reporting to the Office of Management and Budget.

A draft of the proposed PSC Manual will be posted in a GSA blog application, *http://blog.citizen.apps.gov/GSA_PSC_Manual/* on February 8, 2011. There will be a "Comment" section in the blog. A thirty (30) day comment period will be available.

Dated: January 18, 2011.

Rodney Lantier,

Assistant Deputy Associate Administrator, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2011–1291 Filed 1–21–11; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Independent Scientific Peer Review Panel Meeting on an *In Vitro* Estrogen Receptor Transcriptional Activation Test Method for Endocrine Disruptor Chemical Screening; National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Announcement of an Independent Scientific Peer Review Panel Meeting on an *In Vitro* Estrogen Receptor Transcriptional Activation Test Method for Endocrine Disruptor Chemical Screening; Availability of Draft Background Review Document (BRD); Request for Comments

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Meeting announcement and request for comments.

SUMMARY: NICEATM, in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), announces a public meeting of an independent scientific peer review panel (Panel) to evaluate the validation status of LUMI–CELL® ER (BG1Luc ER TA), an *in vitro* transcriptional activation (TA) assay used to identify chemicals that can interact with human estrogen receptors (ERs). Validated assays that can detect the interaction of chemicals with specific hormone receptors, including ERs, have been accepted and included in the U.S. Environmental Protection Agency (EPA) Endocrine Disruptor Screening Program (EDSP) (*http://www.epa.gov/endo/pubs/assayvalidation/status.htm*). Consequently, the BG1Luc ER TA may be applicable for addressing the ER TA component of the EPA EDSP Tier 1 screening battery.

At this meeting, the Panel will review the draft BRD for the BG1Luc ER TA and evaluate the extent to which established validation and acceptance criteria have been appropriately addressed. The Panel also will be asked to comment on the extent to which the information included in the BRD supports ICCVAM's draft test method recommendations.

NICEATM invites public comments on the draft BRD and draft ICCVAM test method recommendations. These documents are available on the NICEATM–ICCVAM Web site at: *http://iccvam.niehs.nih.gov/methods/endocrine/PeerPanel11.htm*.

DATES: The meeting will be held on March 29–30, 2011, from 8:30 a.m. to 5 p.m. each day. In order to facilitate planning for this meeting, persons wishing to attend are asked to register by March 15, 2011, via the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/contact/reg-form-EDpanel.htm*). Comments should be sent by March 10, 2011.

ADDRESSES: The meeting will be held at the National Institutes of Health (NIH), William H. Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892. Persons needing special assistance in order to attend, such as sign language interpretation or other reasonable accommodation, should contact 301–402–8180 (voice) or 301–435–1908 TTY (text telephone) at least seven business days before the event.

FOR FURTHER INFORMATION CONTACT: Dr. Warren Casey, Deputy Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail)

niceatm@niehs.nih.gov. Courier address: NICEATM, NIEHS, 530 Davis Drive, Room 2035, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

In January 2004, Xenobiotics Detection Systems, Inc. (XDS, Durham, NC) nominated their LUMI–CELL® TA (BG1Luc ER TA) Test Method for an interlaboratory validation study to be coordinated by NICEATM. This method uses BG–1 cells, a human ovarian carcinoma cell line that was stably transfected with an estrogen-responsive luciferase reporter gene, to measure whether and to what extent a substance induces or inhibits TA activity via ER mediated pathways. Included in the nomination package were test results from XDS for 56 of the 78 ICCVAM Reference Substances for agonist activity and 16 of the 78 ICCVAM Reference Substances for antagonist activity. These studies were funded primarily by a Small Business Innovation Research (SBIR) grant (SBIR43ES010533–01) from the NIEHS.

In accordance with the ICCVAM nomination process, NICEATM conducted a pre-screen evaluation of the nomination package to determine the extent to which it addressed the ICCVAM prioritization criteria and adherence to the ICCVAM recommendations for the standardization and validation of *in vitro* endocrine disruptor test methods. Based on this evaluation, ICCVAM recommended a high priority for validation studies for the BG1Luc ER TA test method. The NIEHS subsequently agreed to support the validation study in light of its participation as one of the three NTP agencies, whose mission includes the development and validation of improved testing methods.

The international interlaboratory validation study of the BG1Luc ER TA test method has been completed. The study included three laboratories sponsored by NICEATM, the European Centre for the Validation of Alternative Methods, and the Japanese Center for the Validation of Alternative Methods.

NICEATM and ICCVAM have prepared a draft BRD that provides comprehensive summaries of data, analyses of test method accuracy and reliability, and related information characterizing the current validation status of the test method. The draft BRD forms the basis for ICCVAM test method recommendations on usefulness and limitations, standardized test method protocols, future studies, and performance standards.

Peer Review Panel Meeting

This meeting will take place March 29–30, 2011, at the National Institutes of Health (NIH) William H. Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892. It will begin at 8:30 a.m. and is scheduled to conclude each day at approximately 5 p.m. The meeting is open to the public at no charge, with attendance limited only by the space available. The Panel will consider the draft ICCVAM BRD, recommendations, and performance standards for the test method and evaluate the extent to which the draft ICCVAM test method recommendations are supported by the information provided in the draft BRD.

Additional information about the meeting, including a roster of the Panel members and the draft agenda, will be posted on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/endocrine/PeerPanel11.htm* two weeks before the meeting. This information will also be available after that date by contacting NICEATM (*see* **FOR FURTHER INFORMATION CONTACT**).

Attendance and Registration

In order to facilitate planning for this meeting, persons wishing to attend are asked to register by March 15, 2011, via the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/contact/reg-form-EDpanel.htm*.

Availability of the Documents

The draft BRD and draft ICCVAM test method recommendations will be posted no later than February 1, 2011 on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/methods/endocrine/PeerPanel11.htm*) or may be obtained by contacting NICEATM (*see* **FOR FURTHER INFORMATION CONTACT**).

Request for Public Comments

NICEATM invites the submission of written comments on the draft BRD, draft ICCVAM test method recommendations, and draft performance standards by March 10, 2011. NICEATM prefers that comments be submitted electronically via the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm*) or via e-mail to *niceatm@niehs.nih.gov*. Written comments may also be sent by mail, fax, or e-mail to Dr. Casey (*see* **FOR FURTHER INFORMATION CONTACT**). When submitting written comments, please refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable). NICEATM will post all comments on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*) identified by the individual's name and affiliation or sponsoring organization (if applicable). NICEATM will provide these comments to the Panel and ICCVAM agency representatives and make them available to the public at the meeting.

Opportunity will be provided for members of the public to present oral comments at designated times during the peer review. Up to seven minutes will be allotted per speaker. If you wish to present oral statements at the meeting (one speaker per organization), contact NICEATM (*see* **FOR FURTHER INFORMATION CONTACT**) by March 2, 2011. Please provide a written copy of your comments with contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable) when registering to make oral comments. If it is not possible to provide a copy of your statement in advance, please bring 40 copies to the meeting for distribution to the Panel and to supplement the record. Written statements can supplement and expand the oral presentation. Please provide NICEATM with copies of any supplementary written statement using the guidelines outlined above.

Summary minutes and the Panel's final report will be available following the meeting on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*). ICCVAM will consider the Panel's conclusions and recommendations and any public comments received in finalizing their test method recommendations for the test method.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*-3, available at *http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to

evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM is available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov*.

Dated: January 13, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–1329 Filed 1–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Task Force on Community Preventive Services

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Task Force on Community Preventive Services (Task Force). The Task Force—an independent, nonfederal body of nationally known leaders in public health practice, policy, and research who are appointed by the CDC Director—was convened in 1996 by the Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Wednesday, February, 16, 2011 from 8:30 a.m. to 5:30 p.m. EST and Thursday, February 17, 2011 from 8:30 a.m. to 1 p.m. EST.

ADDRESSES: Atlanta Marriott Century Center, 2000 Century Blvd., NE., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Sara Dodge, Division of Community Preventive Services, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, phone: (404) 498–0554, e-mail: *communityguide@cdc.gov.*

SUPPLEMENTARY INFORMATION: *Purpose:* The purpose of the meeting is for the Task Force to consider the findings of reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

Matters To Be Discussed: Effectiveness of small media client-oriented screening interventions to decrease breast, cervical and colorectal cancers; privatization of alcohol retail sales; school dismissal policy to reduce influenza transmission; client or family incentives to reduce vaccine preventable diseases; clinic based education when used alone to reduce vaccine preventable diseases; and extended school hours to promote health equity. New reviews on cardiovascular disease and skin cancer will also be discussed.

Meeting Accessibility: This meeting is open to the public, limited only by space available.

Dated: January 7, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–1302 Filed 1–21–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–156]

Request for the Technical Review of the Draft Current Intelligence Bulletin (CIB): Derivation of Immediately Dangerous to Life and Health (IDLH) Values

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is conducting a public review of the draft, Current Intelligence Bulletin (CIB): Derivation of Immediately Dangerous to Life and Health (IDLH) Values. NIOSH is requesting technical review of the draft CIB. The draft document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/docket/review/docket156/default.html.*

Public Comment Period: Comments must be received by March 15, 2011.

A public meeting to be convened either in Cincinnati, Ohio or via Teleweb may be scheduled at a date and time to be announced later if determined to be necessary. This public meeting will be announced via a subsequent notice.

ADDRESSES: Written comments, identified by docket number NIOSH–156, may be submitted by any of the following ways:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket*, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH 156.

FOR FURTHER INFORMATION CONTACT: G. Scott Dotson, NIOSH, Robert A. Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8540.

SUPPLEMENTARY INFORMATION: In 1974, the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) jointly initiated the development of occupational health standards consistent with Section 6(b) of the Occupational Safety and Health Act of 1970 for substances with then-existing OSHA permissible exposure limits (PELs). This joint effort was called the Standards Completion Program (SCP). As part of the respirator selection process for each draft technical standard, Immediately Dangerous to Life and Health (IDLH) values were determined for each chemical. The purpose of deriving an IDLH value was to provide guidance on respirator selection and to establish a maximum exposure concentration in

which workers, in the event of respiratory protection failure (*e.g.,* contaminant breakthrough in a cartridge respirator or stoppage of air flow in a supplied-air respirator), could escape safely when the exposure was below the IDLH value.

Since the establishment of the original IDLH values in 1974, NIOSH has continued to review the available scientific data to improve the protocol used to derive the acute exposure guidelines, in addition to the chemical-specific IDLH values. This draft CIB represents the most recent update of the scientific rationale and process used to derive IDLH values based on health effects considerations determined through a critical assessment of the toxicology and human health effects data.

The new process relies on a weight-of-evidence approach based on scientific judgment for establishing IDLH values that allows for the critical evaluation of the quality and consistency of the scientific data, and in extrapolation from the available data to the IDLH value. The weight-of-evidence approach refers to the critical examination of all the available data from diverse lines of evidence and the derivation of a scientific interpretation based on the collective body of data including its relevance, quality and reported results. Guidelines are presented to aid in the selection of the critical adverse effect, a point of departure (POD) or the point on the dose-response curve from which dose extrapolation is initiated, and applying default uncertainty factors (UFs) to derive the IDLH value. Conceptually, the derivation process presented in this CIB is similar to that used in other risk assessment applications including the process steps of:

- Hazard characterization,
- Identification of critical adverse effects,
- Identification of a POD,
- Application of an appropriate UF based on the study and POD, and
- Determination of the final risk value.

Supplemental information included within this draft CIB includes (1) An overview of the literature search strategy used to identify relevant data, (2) the scheme used to prioritize and select chemicals for which an IDLH value will be established and (3) an overview of the analysis applied by NIOSH to develop a scientifically-based approach for the selection of the UF during the derivation of IDLH values. In addition, Appendix A of the draft CIB presents an example of the derivation of an IDLH value for vinyl acetate (CAS #108–50–4) based on the new process.

Dated: January 13, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–1301 Filed 1–21–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0044]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information request regarding the Guidance for Industry and FDA Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products.

DATES: Submit either electronic or written comments on the collection of information by March 25, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr. PI50–400B, Rockville, MD 20850. 301–796–3794. *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information Request Regarding Guidance for Industry and FDA Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products (OMB Control Number 0910–0673—Extension)

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 905(j) of the FD&C Act authorizes FDA to establish the form for the submission of information related to

substantial equivalence (21 U.S.C. 387e(j)). In a level 1 guidance document issued under the Good Guidances Practices regulation (21 CFR 10.115), FDA provides recommendations intended to assist persons submitting reports under section 905(j) of the FD&C Act, and explains, among other things, FDA's interpretation of the statutory sections related to substantial equivalence.

Estimation of Burden

FDA estimates the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

FD&C Act sections	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
905(j) and 910(a)	150	1	150	360	54,000
Total					54,000

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on information related to other regulated products and FDA's expectations regarding the tobacco industry's use of the 905(j) pathway to market their products. Table 1 of this document describes the annual reporting burden as a result of the implementation of the substantial equivalence requirements of sections 905(j) and 910(a) of the FD&C Act (21 U.S.C. 387e(j) and 387j(a)). FDA estimates that it will receive 150 section 905(j) reports each year and that it will take a manufacturer approximately 360 hours to prepare a report of substantial equivalence for a new tobacco product. Therefore, FDA estimates the burden for submission of substantial equivalence information will be 54,000 hours.

Dated: January 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1276 Filed 1–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0110]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 23, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–new and title "Prescription Drug Advertisements". Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850. 301–796–3792. *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Advertisements—(OMB Control Number 0910)—New

Section 502(n) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352(n)) requires that manufacturers, packers, and distributors (sponsors) who advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks. For prescription drugs and biologics, section 502(n) of the FD&C Act requires advertisements to contain "* * * a true statement * * *" of certain information including "* * * information in brief summary relating to side effects, contraindications, and effectiveness * * *" as required by regulations issued by FDA. FDA's prescription drug advertising regulations at § 202.1 (21 CFR 202.1) describe requirements and standards for print and broadcast advertisements. Section 202.1 applies to advertisements published in journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems. Print advertisements must include a brief summary of each of the risk concepts from the product's approved package labeling (§ 202.1(e)(1)). Advertisements that are broadcast through media such as television, radio, or telephone communications systems must disclose the major risks from the product's package labeling in either the audio or audio and visual parts of the presentation (§ 202.1(e)(1)); this disclosure is known as the "major statement." If a broadcast advertisement omits the major statement, or if the major statement minimizes the risks associated with the use of the drug, the advertisement could render the drug misbranded in violation of the FD&C Act, (21 U.S.C. 352(n) and section 201 of the FD&C Act (21 U.S.C. 321(n)), and FDA's implementing regulations at § 202.1(e).

Advertisements subject to the requirements at § 202.1 are subject to the PRA because these advertisements disclose information to the public. In addition, § 202.1(e)(6) and (j) include provisions that are subject to OMB approval under the PRA. The information collection requirements in § 202.1 have not previously been submitted to OMB for approval. With this notice, we are seeking comment on the proposed information collection.

Reporting to FDA

Section 202.1(e)(6) includes a provision that is subject to the PRA. Section 202.1(e)(6) permits a person who would be adversely affected by the enforcement of a provision of

§ 202.1(e)(6) to request a waiver from FDA for that provision. The waiver request must set forth clearly and concisely the petitioner's interest in the advertisement, the specific provision of § 202.1(e)(6) from which a waiver is sought, a complete copy of the advertisement, and a showing that the advertisement is not false, lacking in fair balance or otherwise misleading, or otherwise violative of section 502(n) of the FD&C Act.

FDA has not received any waiver requests under § 202.1(e)(6) in the past 10 years. However, we estimate for the purposes of this information collection that FDA would receive one waiver request annually under § 202.1(e)(6). The hours per response is the estimated time that a respondent would spend preparing information to be submitted to FDA under § 202.1(e)(6). Based on its experience reviewing other waiver requests, FDA estimates that approximately 12 hours on average would be needed per submission, including the time it takes to prepare, assemble, and copy the necessary information.

Section 202.1(j), which sets forth requirements for the dissemination of advertisements subject to the standards in § 202.1(e), contains the following information collection that is subject to the PRA:

Under § 202.1(j)(1), a sponsor must submit advertisements to FDA for prior approval before dissemination if: (1) The sponsor or FDA has received information that has not been widely publicized in medical literature that the use of the drug may cause fatalities or serious damage; (2) FDA has notified the sponsor that the information must be part of the advertisements for the drug; and (3) the sponsor has failed to present to FDA a program for assuring that such information will be publicized promptly and adequately to the medical profession in subsequent advertisements, or if such a program has been presented to FDA but is not being followed by the sponsor. Under § 202.1(j)(1)(iii), a sponsor must provide to FDA a program for assuring that significant new adverse information about the drug that becomes known (i.e., use of drug may cause fatalities or serious damage) will be publicized promptly and adequately to the medical profession in any subsequent advertisements.

Under § 202.1(j)(4), a sponsor may voluntarily submit advertisements to FDA for comment prior to publication.

FDA has not received any advertisements requiring prior approval under § 202.1(j)(1) in the past 10 years. However, we estimate for the purposes of this information collection that FDA would receive one advertisement requiring prior approval annually under § 202.1(j)(1). The hours per response is the estimated time that a respondent would spend preparing information to be submitted to FDA under § 202.1(j)(1). Based on its experience reviewing other advertisements, FDA estimates that approximately 2 hours on average would be needed per submission, including the time it takes to prepare, assemble, and copy the necessary information.

FDA has not received any program information required under § 202.1(j)(1)(iii) in the past 10 years. However, we estimate for the purposes of this information collection that FDA would receive one submission of program information annually under § 202.1(j)(1)(iii). The hours per response is the estimated time that a respondent would spend preparing information to be submitted to FDA under § 202.1(j)(1)(iii). Based on its experience reviewing advertisement-related information, FDA estimates that approximately 12 hours on average would be needed per submission, including the time it takes to prepare, assemble, and copy the necessary information.

Based on FDA data, the Center for Drug Evaluation and Research (CDER) estimates that approximately 1,150 draft promotional pieces are received from approximately 125 companies annually for Agency comment prior to publication under § 202.1(j)(4), the Center for Biologics Evaluation and Research (CBER) estimates that approximately 250 draft promotional pieces are received from approximately 25 companies annually under § 202.1(j)(4), and the Center for Veterinary Medicine (CVM) estimates that approximately 5 draft promotional pieces are received from approximately 5 companies annually under § 202.1(j)(4). FDA anticipates that this submission rate will moderately increase in the near future. The estimated total number of submissions under § 202.1(j)(4) is 1,405. The hours per response is the estimated time that a respondent would spend preparing the information to be submitted to FDA under § 202.1(j)(4). Based on its experience reviewing advertisements submitted prior to publication for Agency comment, FDA estimates that approximately 20 hours on average would be needed per submission, including the time it takes to prepare, assemble, and copy the necessary information.

Disclosures to the Public

Under § 202.1, advertisements for human and animal prescription drug and biological products must comply with the standards described in that section.

Based on FDA data, CDER estimates that approximately 15,000 advertisements for prescription drugs, including print and broadcast advertisements, are prepared by approximately 300 companies under § 202.1 annually, CBER estimates that approximately 1,000 of these advertisements are prepared by approximately 30 companies annually, and CVM estimates that approximately 800 of these advertisements are prepared by approximately 25 companies annually. FDA anticipates that this estimate will moderately increase in the near future. The estimated total number of advertisements under § 202.1 is 16,800. The hours per response is the estimated time that a respondent would spend preparing an advertisement subject to § 202.1. Based on its experience reviewing advertisements, FDA estimates that approximately 400 hours on average would be needed per advertisement, including the time it takes to prepare, assemble, and copy the necessary information.

Under § 202.1, if information that the use of a prescription drug may cause fatalities or serious damage has not been widely publicized in the medical literature, a sponsor must include such information in the advertisements for that drug. FDA is not aware of any advertisements that required inclusion of information on fatalities or serious damage associated with use of the drug under § 202.1(j)(1) in the past 10 years. However, we estimate for the purposes of this information collection that one advertisement would require inclusion of such information annually under § 202.1(j)(1). The hours per response is the estimated time that a respondent would spend preparing information to comply with § 202.1(j)(1). Based on its experience reviewing changes to advertisements, FDA estimates that approximately 40 hours on average would be needed to comply with § 202.1(j)(1), including the time it takes to prepare the necessary information.

In the **Federal Register** of March 17, 2010 (75 FR 12756), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment.

The comment said that any waiver requests FDA receives in the future under § 202.1(e)(6) should be granted only for extraordinary reasons because

of the "high public interest value associated with parties fully complying with information requests concerning prescription drugs."

FDA Response: FDA is not aware of any request for a waiver under § 202.1(e)(6). If we receive such a waiver request in the future, we will consider this comment in determining whether or not to grant the request.

Concerning the statement that FDA has not received any advertisements requiring prior approval under § 202.1(j)(1) in the past 10 years, the comment said this may be indicative of FDA's failure to ensure compliance with this provision, rather than simply an indication that no advertisements are received under § 202.1(j)(1). The comment said that FDA should more vigorously investigate and penalize or otherwise sanction sponsors who fail to ensure that significant new adverse information about a drug that becomes known to the sponsors is advertised in compliance with § 202.1(j).

FDA Response: FDA properly enforces the requirements of § 202.1(j). Additionally, the Division of Drug Marketing, Advertising and Communication (DDMAC) works closely with the Office of New Drugs (OND) and sponsors to ensure that information about serious and significant risks that have not been widely publicized is appropriately presented in promotional labeling and advertising. FDA regularly communicates these requests to sponsors through supplement letters sent by OND review divisions and safety update letters sent by DDMAC. DDMAC is not aware of any drugs that have required prior approval under § 202.1(j)—but DDMAC is consistently in contact with OND and sponsors to ensure that promotional labeling accurately communicates serious and significant risk information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Type of submission	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
202.1(e)(6)	Waiver request to FDA	1	1	1	12	12
202.1(j)(1)	Submission of advertisement to FDA for prior approval.	1	1	1	2	2
202.1(j)(1)(iii)	Providing a program to FDA for assuring that adverse information about the drug will be publicized.	1	1	1	12	12
202.1(j)(4)	Voluntarily submitting the advertisement to FDA prior to publication for comment.	155	9	1,395	20	27,900
Total						27,926

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]

21 CFR section	Type of submission	Number of respondents	Annual frequency of disclosure	Total annual disclosure	Hours per disclosure	Total hours
202.1	Advertisements prepared in accordance with § 202.1.	355	47	16,685	400	6,674,000
202.1(j)(1)	Including information about the drug's fatalities or serious damage in the advertisement.	1	1	1	40	40
Total						6,674,040

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1275 Filed 1–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Notice of Public Meeting; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until February 23, 2011, the comment period for the notice of public meeting entitled Generic Drug User Fee; Public Meeting; Request for Comments, published in the **Federal Register** of August 9, 2010 (75 FR 47820). In that notice, FDA announced a public meeting that took place on September 17, 2010, to gather stakeholder input on the development of a generic drug user fee program. FDA is reopening the comment period to permit public consideration of late-received comments and to provide an opportunity for all interested parties to provide information and share views on the matter.

DATES: Submit either electronic or written comments by February 23, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4238, Silver Spring, MD 20993. 301–796–4830. *FAX:* 301–847–3541. *e-mail: peter.beckerman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 9, 2010 (75 FR 47820), FDA published a notice of a public meeting on the development of a generic drug user fee program. In that notice, FDA posed several questions related to a user fee for human generic drugs, and sought public input on such a program. The Agency received submissions and presentations from the public meeting, which are now posted on FDA's Web site. In the **Federal Register** of November 4, 2010 (75 FR 67984), FDA subsequently reopened the comment period for 30 days to allow consideration of submissions received after the original docket closing date. Because FDA has since received multiple requests to reopen the docket, including requests from generic industry segments that did not previously comment, FDA has decided to reopen the docket to permit public input on all the submissions.

Interested persons were originally given until October 17, 2010, to comment on the development of a generic drug user fee program. FDA is now reopening the docket to permit comment until February 23, 2011.

II. Request for Comments

FDA has received several requests to allow interested persons additional time to comment. The requesters represent manufacturers of active pharmaceutical ingredients who did not previously respond to FDA's specific requests for comments. In light of these requests, FDA is reopening the comment period for an additional 30 days.

III. How To Submit Comments

Regardless of attendance at the public meeting interested persons may submit either electronic or written comments to the Division of Dockets Management (*see* **ADDRESSES**). 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: January 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1274 Filed 1–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0620]

The National Antimicrobial Resistance Monitoring System Strategic Plan 2011–2015; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a document for The National Antimicrobial Resistance Monitoring System (NARMS) entitled "NARMS Strategic Plan 2011–2015." The document outlines the strategic goals and objectives for 2011 through 2015 of the NARMS program developed by the participating Agencies (FDA, the Centers for Disease Control and Prevention (CDC), and the United States Department of Agriculture (USDA)) based on recommendations of an External Subcommittee of the Science Board to FDA. The Agency is soliciting public comment on the goals and objectives in the Strategic Plan and whether the goals and objectives meet the recommendations of the subcommittee.

DATES: Submit either electronic or written comments by March 25, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Patrick McDermott, Center for Veterinary Medicine (HFV–530), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708. 301–210–4213. *e-mail: patrick.mcdermott@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

NARMS is a national public health surveillance program that monitors the susceptibility of enteric bacteria to antimicrobial agents of medical importance. The NARMS program, established in 1996, is a collaboration between FDA, CDC, USDA, and State and local health departments. NARMS also has established collaborations with scientists and surveillance systems monitoring antimicrobial resistance in other countries.

Foodborne diseases are an important cause of morbidity and mortality worldwide. Travel, migration, and distribution of contaminated food contribute to the problem of foodborne diseases. Non-typhoidal *Salmonella* and *Campylobacter* are the leading bacterial causes of foodborne illness in the United States and many countries. Each year over two million people in the United States are infected with these bacteria, resulting in tens of thousands of hospitalizations and hundreds of deaths. Certain populations, such as young children (<5 years), the elderly, and the immunocompromised, are at higher risk for infection. Most *Salmonella* and *Campylobacter* infections are self-limited, but antimicrobial agents are essential to treat severe illness. Antimicrobial resistance occurs among bacterial foodborne pathogens and is recognized as a global public health hazard. NARMS monitors antimicrobial susceptibility in enteric bacteria from humans, retail meats, and food-producing animals. The human isolate component of NARMS was initiated in 1996, and at that time tested only non-typhoidal *Salmonella* and *Escherichia coli* O157 isolates. In 1997, testing of *Campylobacter* isolates began, followed by *Salmonella* serotype Typhi and *Shigella* in 1999. The animal component of NARMS started in 1997, with monitoring of *Salmonella* isolated from chicken, turkey, cattle, and swine carcasses, and later expanded to include *Campylobacter* (1998), *E. coli* (2000), and *Enterococcus* (2003) isolated from chicken carcasses. The retail meat component of NARMS started in 2002 with testing of *Salmonella, Campylobacter, E. coli,* and *Enterococcus* isolates from meat commodities sold in retail stores.

In addition to monitoring, NARMS conducts epidemiologic and microbiologic research studies. Some studies examine risk factors and clinical outcomes of infections with specific bacterial serotypes or subsets of bacteria that exhibit particular resistance patterns. NARMS research studies also focus on understanding the genetic mechanisms of antimicrobial resistance in enteric bacteria and the mechanisms that permit the transfer of resistance

between bacteria, on improving methods for isolation and typing, and on developing new methods for antimicrobial susceptibility testing. Additionally, NARMS examines enteric bacteria for genetic interrelatedness using methods such as pulsed-field gel electrophoresis (PFGE) and multilocus sequence typing. NARMS scientists enter PFGE results into CDC's PulseNet database or USDA's VetNet database.

In March 2007, an External Subcommittee of the Science Board to FDA conducted a review of the NARMS program. This subcommittee made recommendations related to four areas of work performed by NARMS: (1) Sampling, (2) research, (3) international activities, and (4) data management and reporting. Included in the report was a recommendation to develop long-range strategic plans. In September 2008, NARMS held an interagency planning meeting in Athens, GA to prioritize the Science Board subcommittee's recommendations and implement measures to address them. In August 2009, a second meeting was held in Rockville, MD to report on progress, and to begin formulating the Strategic Plan that is the subject of this notice.

NARMS has established four strategic goals: (1) To develop, implement, and optimize a shared database, with advanced data acquisition, analysis, and reporting tools; (2) to make sampling more representative and more applicable to trend analysis; (3) to strengthen collaborative research projects; and (4) to support international activities that promote food safety, especially those that promote mitigation of the spread of antimicrobial-resistant bacteria and resistance determinants. These four goals are discussed more fully in the Strategic Plan and build on the progress made since NARMS' inception, with special emphasis on the recommendations made by the FDA Science Board subcommittee based on its review of the NARMS program in 2007.

II. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistanceMonitoringSystem/default.htm* or *http://www.regulations.gov*.

Dated: January 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–1278 Filed 1–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: February 24, 2011, 8:30 a.m. to 5 p.m., EST. February 25, 2011, 8:30 a.m. to 4 p.m., EST.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center (7400 Wisconsin Avenue), Bethesda, Maryland 20814. Telephone: (301) 657–1234.

Status: The meeting will be open to the public.

Purpose: The members of the ACICBL will advance the planning required to develop their 11th Annual Report for the Secretary of the Department of Health and Human Services (the Secretary) and Congress, using the working topic, Continuing Education, Professional Development and Lifelong Learning for the 21st Century Health Care Workforce. The meeting will provide the planning and writing sub-committees with the opportunity to review the urgent issues related to the training programs, identify resources that will address the gaps and further strengthen the outcomes from these efforts, examine testimony from the experts in the field, and offer recommendations for improvement of these training programs to the Secretary and the Congress.

Agenda: The ACICBL agenda includes an overview of the Committee's general business activities, presentations by and dialogue with experts, and discussion sessions specific to the development of recommendations to be addressed in the 11th Annual ACICBL Report. Agenda items are subject to change as dictated by the priorities of the Committee.

Supplementary Information: Requests to make oral comments or to provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official, at the contact information below. Individuals who plan to attend the meeting and need special assistance should notify Dr. Weiss at least 10 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments at the meeting.

For Further Information Contact: Anyone requesting additional details should contact Dr. Joan Weiss, Designated Federal Official, within the Bureau of Health Professions of the Health Resources and Services Administration. Dr. Weiss may be reached in one of three following methods: (1) Via written request to: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20852; (2) via telephone at (301) 443–6950 or (3) via e-mail at *jweiss@hrsa.gov.* In the absence of Dr. Weiss, CAPT Norma J. Hatot, Senior Nurse Consultant, may be contacted via telephone at (301) 443–2681 or by e-mail at *nhatot@hrsa.gov.*

Dated: January 18, 2011.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2011–1349 Filed 1–21–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel.

Date: March 1, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 989, Bethesda, MD 20892.

Contact Person: Martha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm.

1070, Bethesda, MD 20892. 301–435–0813. *matocham@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel.
Date: March 15, 2011.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 989, Bethesda, MD 20892.
Contact Person: Martha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892. 301–435–0813. *matocham@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: January 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1327 Filed 1–21–11; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Program on Drug Resistance.
Date: February 9, 2011.
Time: 2 p.m. to 6 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.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.
Date: February 23–24, 2011.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Zhuqing Li, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–9523. *zhuqing.li@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innate Immunity.
Date: March 8, 2011.
Time: 1:15 p.m. to 4:45 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: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–594–0985. *vijhs@niaid.nih.gov.*

(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: January 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1326 Filed 1–21–11; 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; Adolescent OCD Treatment Development.
Date: February 7, 2011.
Time: 4 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: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *bollerf@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Epigenomic Modifications In Neurodevelopment.
Date: March 2, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: David W Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608. 301–443–9734. *millerda@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: January 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1330 Filed 1–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R24 Seeding Application.

Date: February 3, 2011.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1328 Filed 1–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel, ZDE1 VH (13) NIDCR Review of Small Research Grants for Data Analysis and Statistical Methodology (R03).

Date: February 14, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878. 301–451–2405. *henriquv@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review Conference Grant Applications (R13s).

Date: March 29, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, MD 20892–4878. 301–594–4809. *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review Extramural Loan Repayment Applications.

Date: March 30, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., room 672, MSC 4878, Bethesda, MD 20892–4878. 301–594–4809. *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1325 Filed 1–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Public Availability of DHS Fiscal Year 2010 Service Contract Inventory

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Homeland Security (DHS) is publishing this notice to advise the public of the availability of the FY 2010 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* DHS has posted its inventory for public review at: *http://www.dhs.gov/xopnbiz/regulations/editorial_0504.shtm* under "Acquisition Reports and Notices."

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Gail Carter at *Gail.A.Carter1@dhs.gov* or telephone 202–447–5302.

Richard Gunderson,

Deputy Chief Procurement Officer.

[FR Doc. 2011–1351 Filed 1–21–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0002]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of partially closed Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet on February 8, 2011 in Washington, DC. The meeting will be partially closed to the public.

DATES: The HSAC will meet on Tuesday, February 8, 2011 from 9:20 a.m. to 3 p.m. EST. The open portion of the meeting will be from approximately 9:20 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Capital Ballroom at the Embassy Suites—Convention Center, 900 10th Street, NW., Washington, DC 20001.

Written comments must be submitted and received by February 2, 2011. Comments must be identified by Docket No. DHS 2011–0002 and may be

submitted by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: HSAC@dhs.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 282–9207

• *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0450, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and DHS–2011–0002, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: HSAC Staff at *hsac@dhs.gov* or 202–447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. The HSAC provides independent, objective advice and recommendations for the consideration of the Secretary of the Department of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, State and local government, the private sector, and academia.

The HSAC will meet for the purpose of receiving information and swearing in new members.

The open portions of the meeting will include opening remarks from the HSAC leadership, a ceremonial swearing in of new members, "If You See Something, Say Something™" public awareness campaign, and Suspicious Activity Reporting" Programs, a View From the Hill, DHS Community Resilience Efforts, and closing remarks.

The closed portions of the meeting will address threats to our homeland security, results of a cyber security exercise, sharing information with others, and Southwest Border operations.

Basis for Closure: In accordance with Section 10(d) of the Federal Advisory Committee Act, it has been determined that certain portions of the meeting require closure as the premature disclosure of the information would not be in the public interest. There will be briefings from DHS Intelligence and Analysis and a high level DHS official regarding domestic and international threats to our homeland security; a presentation on the timely sharing of specific incident threat and law enforcement information with State, local, Tribal and private partners within the Homeland Security Advisory System; and a briefing from Customs and Border Protection on threats at the Southwest Border and joint operations with Mexican law enforcement personnel to address violence and illegal border crossings. Under 5 U.S.C. 552b(c)(7)(E)&(F), disclosure of this information could reveal investigative techniques and procedures not generally available to the public allowing those with interests against the United States to circumvent the law, thereby endangering the life or physical safety of law enforcement personnel. Additionally, under 5 U.S.C. 552b(c)(9)(B), disclosure of these techniques and procedures could frustrate the successful implementation of protective measures designed to keep our country safe.

A briefing on the Cyber Storm III Exercise will include lessons learned and vulnerabilities of cyber assets, as well as potential methods to improve a Federal response to a cyber attack. Under 5 U.S.C. 552b(c)(9)(B), disclosure of this information would be a road map to those who wish to attack our cyber security, and hence, would certainly frustrate the successful implementation of preventive and Counter measures to protect our cybersecurity.

Accordingly, this meeting will be partially closed to the public.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2011–1345 Filed 1–21–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–01]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Natural Experiment Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* March 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Michael Morse, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8128, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Michael Morse at (202) 402–5738 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Transformation Initiative: Natural Experiment Grant Program.

Description of Information Collection: This is a new information collection. The purpose of this effort is to provide funding to support scientific research that makes use of natural experiments to evaluate the impacts of local, State, and Federal policies. In Fiscal Year (FY) 2010, approximately $600,000 has been made available for this program by the Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009). This program is approved under HUD's research authority under

the Transition Initiative Fund. The maximum grant performance period is 24 months. An applicant can request $100,000 to $250,000 per award, depending on the scope of the research proposed. Awards under this NOFA will be made in the form of a Cooperative Agreement. The actual Notice of Funding Availability (NOFA) will contain the selection criteria for awarding grants and specific requirements that will apply to selected grantees.

OMB Control Number: None.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011. *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Members of Affected Public: Nonprofit organizations, for profit organizations located in the U.S. (HUD will not pay fee or profit for the work conducted under this NOFA), foundations, think tanks, consortia, Institutions of higher education accredited by a national or regional accrediting agency recognized by the U.S. Department of Education and other entities that will sponsor a researcher, expert or analyst.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses:

(1) Pre-Award

HUD estimates that each applicant spends approximately 42 person-hours to complete an application. Almost all of this time is invested by a professor or other senior administrator who would oversee the program. HUD estimates the mean hourly rate at $30. For 20 applications, the computation is as follows: 20 applications × 42 hours × $30 per hours= $25,200.

(2) Post-Award

HUD estimates that each grantee will spend approximately 6 hours a year maintaining records. HUD also estimates that each grantee will spend approximately 4 hours a year preparing monitoring reports. Clerical staff and faculty/supervisory staff will share this burden. HUD estimates the applicable hourly rate at $15. The computation is as follow: 5 grantees × 10 hours × $15 an hour = $750.

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hours per response	Total hours
SF424	20	1	20	0.75	15
SF424 Supplement	20	1	20	0.08	1.6
HUD 424CB	20	1	20	3	60
SFLLL	20	1	20	0.17	3.4
HUD 2880 (2510–0011)	20	1	20	0	0
HUD 96010 (2535–0114)	20	1	20	3	60
Rating factor 1	20	1	20	7	140
Rating factor 2	20	1	20	7	140
Rating factor 3	20	1	20	7	140
Rating factor 4	20	1	20	7	140
Rating factor 5	20	1	20	7	140
Subtotal (Application)	20	1	20	42	840
Quarterly Reports	5	4	20	6	120
Record keeping	5		5	4	20
Total	20		40	Varies	980

Total Estimated Burden Hours: 980.

Status of the proposed information collection: New collection.

Status of the proposed information collection: Pending OMB approval.

Authority: U.S. Code Title 12 1701z; Research and demonstrations.

Dated: January 13, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–1348 Filed 1–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–03]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Homeless Families Small Grant Research Demonstration Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* March 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Michael Morse, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8130, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Michael Morse at (202) 402–5738 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Transformation Initiative: Homeless Families Small Grant Research Demonstration Program.

OMB Control Number: None.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

Members of the Affected Public: Institutions of higher education accredited by a national or regional accrediting agency recognized by the U.S. Department of Education are the official applicants. *Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	15	15	35	525
Quarterly Reports	2	8	6	48
Final Reports	2	2	2	4
Recordkeeping	2	2	4	8
Total	21	27	54	585

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 13, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–1356 Filed 1–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR- 5411–N–07]

Credit Watch Termination Initiative Termination of Origination Approval Agreements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 45th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes branch(es) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another FHA-insured mortgagee with direct endorsement approval for the area covered by the termination. Mortgagees are obligated to continue to pay existing

insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the Origination Approval Agreement if the approval for the affected branch or branches has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 and 202.12. However, Mortgagee Letter 2010–20 and Final Rule 5356–F–02 at 24 CFR 202 eliminates FHA approval for loan correspondents after December 31, 2010. Therefore, HUD will not accept requests for reinstatement from loan correspondents after that date. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Origination Agreements terminated by HUD:

Mortgagee name	Mortgagee branch office address	HUD office jurisdictions	Termination effective date	Homeownership centers
Access Mortgage Services Inc	97 Main St., Ste 209, Woodbridge, NJ 07095	Newark	11/23/2010	Philadelphia
Anchor Mortgage	6260 S Rainbow Blvd., Ste 100, Las Vegas, NV 89118.	Las Vegas	11/16/2010	Santa Ana
Benefit Funding Corp	10724 Baltimore Ave., Beltsville, MD 20705	Washington	11/15/2010	Philadelphia
Birmingham Bancorp Mortgage Corp	6230 Orchard Lake Rd., Ste 280, West Bloomfield, MI 48322.	Detroit	11/15/2010	Philadelphia
Dedicated Mortgage Associates LLC	225 Derry Rd., Hudson, NH 03051	Bangor	11/15/2010	Philadelphia
Equitable Trust Mortgage Corp	5024 Campbell Blvd., Ste G, Baltimore, MD 21236.	Washington	11/15/2010	Philadelphia
Equity Source Home Loans LLC	150 Airport Rd., Ste 1100, Lakewood, NJ 08701.	Camden	12/14/2010	Philadelphia
Equity Source Home Loans LLC	1120 Campus Dr., Morganville, NJ 07751	Camden	12/14/2010	Philadelphia
First Performance Mortgage Corp	1221 Lake Dr., SE., Ste 103, Bessemer, AL 35022.	Birmingham	11/15/2010	Atlanta
Freedom Mortgage Corp	10500 Kincaid Dr., Ste 300, Fishers, IN 46037	Indianapolis	11/15/2010	Atlanta
Homeland Lending Inc	105 S Wheeler St., Ste 300, Plant City, FL 33563.	Jacksonville	11/15/2010	Atlanta
Metro Finance Corp	30 S Stolp Ave., Ste 314, Aurora, IL 60506	Chicago	11/15/2010	Atlanta
Moncor Inc	4660 Wadsworth Blvd., Wheat Ridge, CO 80033.	Denver	11/16/2010	Denver
MVB Mortgage Corp	24400 Northwestern Hwy., Southfield, MI 48075.	Detroit	11/16/2010	Philadelphia
Signature One Mortgage Inc	5875 S Rainbow Blvd., Ste 110, Las Vegas, NV 89118.	Las Vegas	11/15/2010	Santa Ana
Valor Financial Services LLC	1911 Rohlwing Rd., Ste A, Rolling Meadows, IL 60008.	Chicago	11/16/2010	Atlanta

Dated: January 12, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–1360 Filed 1–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5493–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2011, is 2½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2011, is 3⅞ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2011, is 3⅞ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 3⅞ percent for the 6-month period beginning January 1, 2011. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2011.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2011, is 2½ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: January 12, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–1358 Filed 1–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of the Ocean Energy Safety Advisory Committee

AGENCY: Department of the Interior.

ACTION: Establishment of the Ocean Energy Safety Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration, the Department of the Interior is announcing the establishment of the Ocean Energy Safety Advisory Committee (Committee). The purpose of the Committee is to provide advice on matters and actions relating to offshore energy safety, including, but not limited to drilling and workplace safety, well intervention and containment, and oil spill response. The Committee will also facilitate collaborative research and development, training and execution in these and other areas relating to offshore energy safety.

The Department of the Interior is seeking nominations for individuals to be considered as Committee members.

DATES: Written nominations must be received by February 23, 2011.

ADDRESSES: Send nominations to: Lindsay Dubin, Special Assistant to the Director, Bureau of Ocean Energy Management, Regulation and Enforcement, 1849 C Street, NW., Mailstop 5438, Washington, DC 20240; *Lindsay.Dubin@boemre.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsay Dubin, Special Assistant to the Director, Bureau of Ocean Energy Management, Regulation and Enforcement, 1849 C Street, NW., Mailstop 5438, Washington, DC 20240; *Lindsay.Dubin@boemre.gov.*

SUPPLEMENTARY INFORMATION: The Offshore Energy Safety Advisory Committee is being established in connection with the responsibilities of the Department of the Interior under the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1331 *et seq.* The Secretary of the Interior certifies that the formation of the Committee is necessary and is in the public interest.

The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior through the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), or the Designated Federal Officer (DFO). BOEMRE will provide administrative and logistical support to the Committee.

The purpose of the Committee is to provide advice on matters and actions relating to offshore energy safety, including, but not limited to drilling and workplace safety, well intervention and containment, and oil spill response, and to facilitate collaborative research and development, training and execution in these and other areas relating to offshore energy safety.

Members of the Committee will include representatives from the offshore energy industry; the academic community; non-governmental organizations; and the Federal Government, including BOEMRE, the Department of Energy, the National Oceanic and Atmospheric Administration, and the United States Coast Guard.

The Committee will meet approximately five times annually, and at such times as designated by the DFO. The Secretary of the Interior will appoint members to the Committee, with input and recommendations from the above-referenced Federal agencies, the offshore energy industry, the academic community and other stakeholders.

Certification Statement: I hereby certify that the establishment of the Ocean Energy Safety Advisory Committee is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior under the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1331 *et seq.*

Dated: January 19, 2011.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2011–1374 Filed 1–21–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Notice on Outer Continental Shelf Oil and Gas Lease Sales

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

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2010, through April 30, 2011. The List of Restricted Joint Bidders published in the **Federal Register** on May 3, 2010, covered the period May 1, 2010, through October 31, 2010.

Group I	Exxon Mobil Corporation. ExxonMobil Exploration Company.
Group II	Shell Oil Company. Shell Offshore Inc. SWEPI LP. Shell Frontier Oil & Gas Inc. Shell Onshore Ventures Inc. SOI Finance Inc. Shell Rocky Mountain Production LLC. Shell Gulf of Mexico Inc. East Resources Management, LLC.
Group III	BP America Production Company. BP Exploration & Production Inc. BP Exploration (Alaska) Inc.
Group IV	Chevron Corporation. Chevron U.S.A. Inc. Chevron Midcontinent, LP. Unocal Corporation. Union Oil Company of California. Pure Partners, LP.
Group V	ConocoPhillips Company. ConocoPhillips Alaska, Inc. Phillips Pt. Arguello Production Company. Burlington Resources Oil & Gas Company LP. Burlington Resources Offshore Inc. The Louisiana Land and Exploration Company. Inexeco Oil Company.
Group VI	Eni Petroleum Co. Inc. Eni Petroleum US LLC. Eni Oil US LLC. Eni Marketing Inc. Eni BB Petroleum Inc. Eni US Operating Co. Inc. Eni BB Pipeline LLC.
Group VII	Petrobras America Inc. Petroleo Brasileiro S.A.
Group VIII	StatoilHydro ASA. Statoil Gulf of Mexico LLC. StatoilHydro USA E&P, Inc. StatoilHydro Gulf Properties Inc.
Group IX	Total E&P, Inc.

Dated: January 3, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–1319 Filed 1–21–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N217; 40136–1265–0000–S3]

Lake Wales Ridge National Wildlife Refuge, Highlands and Polk Counties, FL; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Lake Wales Ridge National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Charles Pelizza, Refuge Manager, 1339 20th Street, Vero Beach, FL 32960–3559, or by e-mail to: *PelicanIsland@fws.gov.* The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/* under "Final Documents."

FOR FURTHER INFORMATION CONTACT: Mr. Charles Pelizza; telephone: 772/562–3909, extension 244; e-mail: *PelicanIsland@fws.gov;* or Mr. Bill Miller; telephone: 561/715–0023; e-mail: *LakeWalesRidgeCCP@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Lake Wales Ridge NWR. We started this process through a notice in the **Federal Register** on June 20, 2008 (73 FR 35149).

Lake Wales Ridge NWR is a unit of the Merritt Island National Wildlife Refuge Complex and is administered by and co-managed with Pelican Island and Archie Carr National Wildlife Refuges, colloquially termed the Pelican Island National Wildlife Refuge Complex.

Lake Wales Ridge NWR is one of the first of its kind in the National Wildlife Refuge System to target community-level conservation—specifically scrub habitat—a unique vegetation type largely restricted to the central Florida ridge systems occurring on the remnants of ancient beach and sand dune systems from Ocala National Forest to southern Highlands County, Florida.

The refuge consists of 1,842.4 acres in fee title across four management units within a 12-unit approved acquisition boundary. These four units are as follows: Flamingo Villas (1,037.6 acres), Carter Creek (627.5 acres), Lake McLeod (38 acres), and Snell Creek (139.3 acres). The refuge contains prime examples of several highly imperiled ecosystems, including Florida scrub and sandhill, as well as over half of the Federally listed plant species endemic to the Lake Wales Ridge. The refuge protects 17 Federally listed plants, 40 endemic plants, 6 listed animals, and 1 candidate species, and more than 40 endemic invertebrates. Because of the potential for impacts to these plants and animals, the refuge has not been opened to the public.

Each of the four units comprising the refuge has its own particular merits and value. Ten Federally listed plants, including the only protected population of the Federally listed endangered Garrett's mint, and five Federally listed animals are known to exist on the refuge's Flamingo Villas Unit, including the threatened Florida scrub-jay. The Carter Creek Unit is an excellent example of endemic-rich Lake Wales Ridge sandhill, where 13 Federally listed plants exist, including an introduced population of the Florida ziziphus, once thought to be extinct. It is one of only a dozen populations known and one of the rarest and most endangered plants in the State. Eight Federally listed plants and two Federally listed animals occur on the small, 36-acre Lake McLeod Unit, one of but two protected sites where the endangered scrub lupine occurs. The Snell Creek Unit contains the vast majority of the refuge's sand pine scrub habitat where rare, threatened, and endangered species are known to occur, including the endangered sand skink.

The refuge exists as part of a network of scrubs which include lands managed by the U.S. Avon Park Air Force Range, State of Florida, The Nature Conservancy, Archbold Biological Station, and Polk and Highland Counties, with similar purposes to protect and manage what remains of this unique ecosystem.

We announce our decision and the availability of the final CCP and FONSI for Lake Wales Ridge NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the Draft Comprehensive Conservation Plan and Environmental Assessment for Lake Wales Ridge NWR. The CCP will guide us in managing and administering Lake Wales Ridge NWR for the next 15 years.

Compatibility determinations are available in the CCP and include Research, Wildlife Observation and Photography, and Environmental Education and Interpretation.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (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, 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, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on April 30, 2010 (75 FR 22832). We received comments from local citizens and organizations.

Selected Alternative

After considering the comments we received, and based on the professional judgment of the planning team, we selected Alternative B for implementation.

The primary focus under Alternative B is management for rare, threatened, and endangered species. Implementing Alternative B is expected to result in restoring, improving, and maintaining habitat conditions for the many and varied rare, threatened, and endangered species found on the refuge. Increased information on a variety of species, suites of species, and habitats will enhance our decision-making. Further benefits will be realized from increased control of exotic, invasive, and nuisance species, and implementation of a prescribed fire program to target restoration of habitats to pre-fire exclusion conditions in support of rare, threatened, and endangered species. We will coordinate with partners to address challenges related to the impacts of landscape-level ecosystem stresses, including climate change and habitat conversion. We will increase our science and management capacities. We will enhance resource protection through focused and innovative land acquisition strategies and provide boundary protection from illicit uses. To achieve this, we will work with governmental and non-governmental partners, area communities, and local businesses, in addition to pursuing additional staff to address management concerns.

Alternative B is considered to be the most effective for meeting the purposes

of the refuge. It addresses priority issues such as: (1) Declines in and threats to rare, threatened, and endangered species; (2) lack of baseline information on resources; (3) lack of an effective approach to apply fire management and measure fire effects; (4) existence, persistence, and spread of exotic, invasive, and nuisance species; (5) management challenges resulting from fragmented conservation lands under multiple jurisdictions; (6) inability to complete acquisition within the refuge's approved acquisition boundary; (7) threats and impacts of an increasing human population; (8) lack of on-site staff and resources to address needs; and (9) lack of understanding on the effects of global climate change on resources.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 22, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–1305 Filed 1–21–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of February 5, 2011, Meeting.

SUMMARY: This notice sets forth the date of the February 5, 2011, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, February 5, 2011, from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held via teleconference at the Flight 93 National Memorial office, 109 West Main Street, Suite 104, Somerset, PA 15501.

Agenda

The February 5, 2011, joint Commission and Task Force meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from November 10, 2010.
3. Reports from the Flight 93 Memorial Task Force and National Park Service.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501. 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 23, 2010.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2011–1352 Filed 1–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Alien Employment Certification

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the information collection request (ICR) sponsored by the Employment and Training Administration (ETA) titled, "Application for Alien Employment Certification," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before February 23, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection permits the DOL to meet its statutory responsibilities for program administration, management, and oversight under the Immigration and Naturalization Act. Form ETA 750 part A collects information needed for the professional athlete labor certification program for both temporary and permanent athletes. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined at 8 U.S.C. 1101(a)(15)(H)(ii)(b) and explained in regulations section 8 CFR 214.2(h)(6). Professional athletes are included in the H–2B program. Form ETA 750 part B collects information about the professional athlete on whose behalf an application for permanent labor certification is filed. Part B is also required by the DHS for aliens applying for the National Interest Waiver (NIW) of the job offer requirement. Part B provides detailed information about an alien's education and work history, as required and explained in regulations section 8 CFR 204.5(k)(4)(ii).

Under the PRA, a Federal agency generally cannot conduct or sponsor a collection of information unless it is currently approved by the OMB under the PRA and displays a currently valid OMB control number. Furthermore, the public is generally not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0015. The current OMB approval is scheduled to expire on January 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 20, 2010 (75 FR 51484).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1205–0015. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title of Collection: Application for Alien Employment Certification.

Form Number: ETA–750 part A, ETA–750 part B.

OMB Control Number: 1205–0015.

Affected Public: Private sector, businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,035.

Total Estimated Number of Responses: 2,035.

Total Estimated Annual Burden Hours: 3,696.

Total Estimated Annual Costs Burden: $207,747.

Dated: January 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–1294 Filed 1–21–11; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Slope and Shaft Sinking Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces submission of the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Slope and Shaft Sinking Plans," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before February 23, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Federal Mine Safety and Health Act of 1977 (Mine Act) section 103(h), 30 U.S.C. 813, authorizes the MSHA to collect information necessary to carry out the agency's duty in protecting the safety and health of miners. Regulations section 30 CFR 77.1900 requires an underground coal mine operator to submit for approval a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended from the surface to the underground coal mine.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0019. The current OMB approval is scheduled to expire on January 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 16, 2010 (Vol. 75 FR 56562).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1219–0019. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Slope and Shaft Sinking Plans.

OMB Control Number: 1219–0019.

Affected Public: Private sector, businesses or other for-profits.

Total Estimated Number of Respondents: 73.

Total Estimated Number of Responses: 73.

Total Estimated Annual Burden Hours: 1,460.

Total Estimated Annual Costs Burden: $1,272.

Dated: January 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–1306 Filed 1–21–11; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–007)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, February 10, 2011, 8 a.m.–5 p.m., Local Time. Friday, February 11, 2011, 8 a.m.–12 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 9H40, (PRC), Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include reports from the NAC Committees:

—Aeronautics.
—Audit, Finance and Analysis.
—Commercial Space.
—Education and Public Outreach.
—Exploration.
—Science.
—Space Operations.
—Technology and Innovation.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council meeting in room 9H40 before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S. Fax to Marla King, NASA Advisory Council Administrative Officer, FAX: (202) 358–3030, by no later than February 1, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marla King via e-mail at *marla.k.king@nasa.gov* or by telephone at (202) 358–1148 or fax: (202) 358–3030.

Dated: January 14, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–1367 Filed 1–21–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–008)]

National Environmental Policy Act; Mars Science Laboratory (MSL) Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Modified Record of Decision (ROD) for MSL Final Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA prepared and issued the Final EIS for the proposed MSL Mission. A ROD was issued on December 27, 2006 indicating NASA's decision to prepare and launch the MSL Mission in 2009. A copy of the Final EIS and ROD are available at the following Web site: *http://science.nasa.gov/missions/msl/.* NASA was unable to finish preparation of the MSL Mission in time for the 2009 launch opportunity, and NASA Science Mission Directorate (SMD) Associate Administrator issued a modified ROD indicating NASA's decision to complete preparation and launch the MSL mission in 2011. The full text of the modified ROD is provided below.

DATES: *Effective Date:* January 24, 2011.

FOR FURTHER INFORMATION CONTACT: Additional information about NASA's MSL Mission is available on the MSL Mission Web site at *http://science.nasa.gov/missions/msl/. Agency Point of Contact:* Mr. Dave Lavery, Planetary Science Division, Science Mission Directorate, NASA Headquarters, Washington, DC 20546–0001, telephone 202–358–4800, or electronic mail *dave.lavery@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Modified Record of Decision: NASA MSL Mission

This modified Record of Decision (ROD) documents NASA's consideration of possible changes in the potential environmental impacts of the Mars Science Laboratory (MSL) mission with the launch postponed from the original 2009 launch opportunity to the next available launch opportunity in 2011.

This document modifies the ROD issued for the MSL mission on December 27, 2006. In 2006, NASA decided to complete preparations for launch of the MSL mission during a September to November 2009 launch period and to operate the mission using a Multi-Mission Radioisotope Thermoelectric Generator (MMRTG) as the primary power source for the rover. However, in December 2008, NASA made a determination that the MSL rover could not be ready in time for the original 2009 launch window because of unexpected spacecraft technical and testing challenges. Launch opportunities for Mars missions occur approximately every 26 months; consequently, the next launch opportunity is November to December 2011. NASA is continuing preparations for launch of the MSL mission during this next launch opportunity.

In considering the launch of the MSL mission during late 2011, NASA identified factors that might affect the environmental impact analysis presented in the existing Final Environmental Impact Statement (FEIS) for the MSL mission. The Department of Energy (DOE) helped NASA reassess potential radiological impacts by evaluating the nuclear risk described in the 2006 FEIS against up to date

information regarding the MSL mission and use of the 2011 launch opportunity. Factors included in this evaluation included the launch vehicle selection, duration and time of the launch period, meteorology for the launch period, launch trajectories, and ground processing of the launch vehicle. NASA also reassessed the non-radiological environmental impacts discussed in the FEIS against up to date information regarding the MSL mission. Factors included in this evaluation included updated information concerning spacecraft trajectories and potential reentry accidents and environments.

Background (Purpose and Need for the Proposed Mission)

The purpose of the MSL mission is to both conduct comprehensive science on the surface of Mars and demonstrate technological advancements in the exploration of Mars. As described in the 2006 FEIS, the mission's overall scientific goals are: (1) Assess the biological potential of at least one selected site on Mars; (2) characterize the geology and geochemistry of the landing region at all appropriate spatial scales; (3) investigate planetary processes of relevance to past habitability; and (4) characterize the broad spectrum of the Martian surface radiation environment. The objectives planned for the mission are described in the December 27, 2006, NASA Record of Decision for the MSL mission.

History of MSL NEPA Compliance Activities

NASA prepared an environmental impact statement (EIS) to analyze the potential environmental impacts of the planned MSL mission. The DOE was a cooperating agency in the EIS because the Proposed Action would use a DOE-developed and owned radioisotope power system (RPS), specifically the MMRTG, to provide electrical power for the MSL rover.

On March 10, 2006, NASA published a Notice of Intent in the **Federal Register** (71 FR 12402) to prepare an EIS and conduct scoping for the MSL mission. Public input and comments on alternatives, potential environmental impacts and concerns associated with the proposed MSL mission were requested. The scoping period ended on April 24, 2006. One scoping comment was received during this period from a Federal agency expressing concerns regarding habitat management of threatened and endangered species near the MSL launch site at Cape Canaveral Air Force Station (CCAFS), Florida. These concerns were addressed in the Draft EIS (DEIS).

NASA published a Notice of Availability (NOA) of the DEIS for the MSL mission in the **Federal Register** on September 5, 2006 (71 FR 52347). The DEIS was mailed by NASA to 59 potentially interested Federal, State and local agencies, organizations and individuals. In addition, the DEIS was publicly available in electronic format on NASA's Web site. The U.S. Environmental Protection Agency (EPA) published its NOA for the DEIS in the **Federal Register** on September 8, 2006 (71 FR 53093), initiating the 45-day review and comment period.

The public review and comment period closed on October 23, 2006. NASA received ten comment submissions (letters and other written comments) from three Federal agencies, one State agency, one private organization, and five individuals. The comments received included "no comment", requests for clarification of specific sections of text, and objections to the use of nuclear material for space missions. In addition, NASA received a total of 34 comment submissions via electronic mail (e-mail) from 32 individuals. These comment submissions include objections to the use of nuclear material for space missions, and general support for the proposed MSL mission. These comments were considered in developing the FEIS, and responses to these comments were prepared and included in the FEIS as Appendix D.

In addition to soliciting comments for submittal by letter and e-mail, NASA held three meetings during which the public was invited to provide both oral and written comments on the MSL DEIS. Two meetings were held on September 27, 2006, at the Florida Solar Energy Center in Cocoa, Florida, and one meeting was held on October 10, 2006, at the Hyatt Regency Hotel in Washington, DC. NASA placed paid advertisements announcing the dates, times, and purpose of the public meetings in local and regional newspapers together with the full text of NASA's NOA in the legal notices section of each newspaper. Members of the public attending each meeting were asked to register their attendance at the meeting. However, registration was not a requirement for anyone wishing to present either oral or written comments. Eleven members of the public registered for the 1 p.m. meeting and seven registered for the 6 p.m. meeting on September 27 in Cocoa, Florida. Eleven members of the public registered for the meeting on October 10 in Washington, DC. Excerpts of the official transcripts taken by a court reporter during the September 27 meetings, during which three members of the public presented oral comments, were included in the FEIS as Appendix E; no oral comments were presented during the October 10 meeting.

The EPA published a finding of no objection (*i.e.,* LO—Lack of Objection) to the Proposed Action regarding NASA's DEIS in the **Federal Register** on November 3, 2006 (71 FR 64701).

NASA published its NOA for the FEIS in the **Federal Register** on November 21, 2006 (71 FR 67389), and mailed copies to 119 Federal, State and local agencies, organizations, and individuals. In addition, NASA made the FEIS available in electronic format on its Web site and mailed the FEIS to commentors on the DEIS. NASA sent e-mail notifications to 23 individuals who had submitted comments on the DEIS via e-mail or had previously expressed interest in the MSL mission. The EPA published its NOA in the **Federal Register** on November 24, 2006 (71 FR 67863), initiating the 30-day waiting period, which ended on December 26, 2006. The EPA issued a finding of no objection to the Proposed Action in the FEIS on December 21, 2006. No additional comments were received by NASA during this period.

On December 27, 2006, NASA issued a ROD to complete preparations for launch of the proposed MSL mission during September through November 2009 and to operate the mission using an MMRTG as the primary power source for the rover.

Key Environmental Issues Addressed in the MSL EIS

Two key environmental issues addressed in the MSL EIS were the air emissions that would accompany normal launch of the MSL spacecraft, and the environmental consequences associated with potential launch accidents.

Environmental Consequences of a Normal Launch

The primary environmental impacts of a normal mission launch would be associated with airborne emissions from the strap-on solid rocket boosters that would be used on the Atlas V launch vehicle. Air emissions from the liquid propellant engines on the Atlas V core vehicle, although large in magnitude, would be relatively inconsequential in terms of environmental effects. The effects of a normal launch would include short-term adverse impacts on air quality within the exhaust cloud at and near the launch pad, and the potential for acidic deposition from the solid booster exhaust on the vegetation and surface water bodies at and near the

launch complex. Shortly after lift-off, the exhaust cloud would be transported downwind and upward, eventually dissipating to background concentrations. Because launches from Cape Canaveral Air Force Station (CCAFS) are relatively infrequent events and winds rapidly disperse and dilute the launch emissions to background concentrations, no long-term adverse impacts to air quality in offsite areas would be anticipated. Surface waters in the immediate area of the exhaust cloud would temporarily acidify from deposition of hydrogen chloride, but no prolonged acidification or other long-term adverse effects would be anticipated. Biota in the immediate vicinity of the launch pad could be damaged or killed by intense heat following ignition and hydrogen chloride deposition from the exhaust cloud, but no long-term adverse effects to biota would be anticipated. Neither short-term nor long-term adverse impacts to threatened or endangered species would be expected. No significant socioeconomic impacts would be expected on nearby communities, and no impacts would be expected to cultural, historical, or archeological resources as a result of the MSL mission launch.

Some short-term ozone degradation would occur along the flight path as the Atlas V launch vehicle passes through the stratosphere and deposits ozone-depleting chemicals from the exhaust products of the solid rocket boosters. However, the depletion trail from a launch vehicle has been estimated to be largely temporary, and is self-healing within a few hours of the vehicle's passage. The total contribution to the average annual depletion of ozone from the launch of large expendable launch vehicles with solid rocket boosters in a given year has been estimated to be small (approximately 0.014 percent per year). Because launches at CCAFS are always separated by at least a few days, combined impacts in the sense of holes in the ozone layer combining or reinforcing one another cannot occur.

Launch of the Atlas V for the MSL mission would produce a very small fraction (less than 0.00001 percent) of the annual net greenhouse gases emitted by the United States. Therefore, launch of the mission would not be anticipated to substantially contribute to the accumulation of greenhouse gases.

Environmental Consequences of Potential Accidents

Radiological Considerations

Consideration of launch accidents involving radiological consequences was a principal focus of the MSL EIS. As described in the MSL EIS, depending upon the sequence of events, some launch accidents could result in release of some of the plutonium dioxide (PuO_2) contained in the MMRTG, which could have adverse impacts on human health and the environment.Results of the DOE risk assessment for the EIS showed that the most likely outcome of implementing the MSL mission would be a successful launch with no release of radioactive materials. For most launch-related problems that could occur prior to launch, the most likely result would be a safe hold or termination of the launch countdown.

The EIS risk assessment did, however, identify potential launch accidents that, although unlikely, could result in a release of PuO_2 in the launch area, southern Africa following suborbital reentry and other global locations following orbital reentry.

For those postulated accidents with a release which could occur in and near the launch area, the predicted mean radiological dose to the maximally exposed individual was about 0.14 rem, which is the equivalent of about 40 percent of the normal annual background dose received by each member of the U.S. population during a year. No short-term radiological effects would be expected from any of these exposures. Each exposure would, however, increase the statistical likelihood of a cancer fatality over the long term. For such unlikely accidents with a release, additional latent cancer fatalities are predicted to be small. (*i.e.,* a mean of 0.4 additional latent cancer fatalities among the potentially exposed members of the local population near the launch area, and a mean of 0.2 additional latent cancer fatalities among potentially exposed members of the global population). These estimates of health consequences assumed no mitigation actions, such as sheltering and exclusion of people from contaminated land areas.

Potential environmental contamination was evaluated in terms of land area exceeding various screening levels and dose-rate related criteria. Results of the MSL EIS risk assessment indicated that a potential, but unlikely launch area accident, involving the intentional destruction of all launch vehicle stages freeing the MMRTG to fall to the ground, could result in about six square kilometers (about two square miles) potentially contaminated above the 0.2 $\mu Ci/m^2$ screening level.

Less likely launch accidents were also assessed. These events were postulated for cases in which an accident occurs in the launch area and the safety systems fail to destroy the launch vehicle. The mean probabilities of these events were estimated to range from 1 in 8,000 to 1 in 800,000. These less likely accidents could, however, expose the MMRTG to severe accident environments, including mechanical damage, fragments, and solid propellant fires, and could result in higher releases of PuO_2 (up to 2 percent of the MMRTG inventory) with the corresponding potential for higher consequences. The maximally exposed individual could receive a mean dose ranging from a fraction of one rem up to about 30 rem following the more severe types of less likely accidents, such as ground impact of the entire launch vehicle, which are considered to be very unlikely (*i.e.,* probabilities ranging from 1 in 10,000 to 1 in 1 million). Assuming no mitigation actions, such as sheltering and exclusion of people from contaminated land areas, radiation doses to the potentially exposed members of the population from a very unlikely launch accident could result in up to 60 mean additional cancer fatalities over the long term.

For the very unlikely accident that involved ground impact of the entire launch vehicle, roughly 90 square kilometers (about 35 square miles) of land area could be contaminated above the 0.2 $\mu Ci/m^2$ screening level. Contamination at this level could necessitate radiological surveys and potential mitigation and cleanup actions.

Non-Radiological Considerations

The two non-radiological accidents of greatest concern would be a liquid propellant spill during fueling operations and a launch vehicle failure. A liquid propellant spill during fueling operations would not be expected to result in any public health impacts or any long-term environmental consequences. Fueling operations for the Atlas V involve rocket propellant-1 (a form of kerosene), liquid hydrogen, liquid oxygen, and hydrazine. Launch preparation activities at CCAFS are subject to environmental regulations, including spill prevention and response requirements, and U.S. Air Force (USAF) and launch service contractor safety requirements specify detailed policies and procedures to be followed to ensure worker and public safety during all liquid propellant fueling operations. Spill containment would be in place prior to any propellant transfer to capture any potential release.

A launch vehicle failure on or near the launch area during the first few seconds of flight could result in the release of the propellants (solid and

liquid) onboard the Atlas V and the spacecraft. The resulting emissions would resemble those from a normal launch, consisting principally of carbon monoxide, carbon dioxide, hydrogen chloride, oxides of nitrogen, and aluminum oxide from the combusted propellants. A launch vehicle failure would result in the prompt combustion of a portion of the released liquid propellants, depending on the degree of mixing and ignition sources associated with the accident, and somewhat slower burning of the solid propellant fragments. Falling debris would be expected to land on or near the launch pad resulting in potential secondary ground-level explosions and localized fires. After the launch vehicle clears land, debris from an accident would be expected to fall over the Atlantic Ocean. Modeling of accident consequences with meteorological parameters that would result in the greatest concentrations of emissions over land areas indicates that the emissions would not reach levels threatening public health. Some burning solid and liquid propellants could enter surface water bodies and the ocean, resulting in short-term, localized degradation of water quality and conditions toxic to aquatic life. Such chemicals entering the ocean would be rapidly dispersed and buffered, resulting in little long-term adverse impact on water quality and resident biota.

Reconsideration of Environmental Issues in Light of Up to Date Mission Information and the Proposed 2011 Launch of MSL

Radiological Considerations

DOE's risk assessment for the MSL EIS was developed during the time when the candidate launch vehicles being considered by NASA for the MSL mission were the Atlas V 541 and the Delta IV Heavy, prior to NASA's selection of the Atlas V 541. A composite approach was taken in the risk assessment in which results for representative configurations of the Atlas V 541 and Delta IV Heavy launch vehicles were combined in a probability-weighted manner to derive accident probabilities, potential releases of PuO_2 in case of an accident, radiological consequences, and mission risks. Differences in the two launch vehicles in terms of design, accident probabilities and accident environments were taken into account in developing composite results.

For the MSL EIS, radiological impacts or consequences for each postulated accident were calculated in terms of: (1) Impacts to individuals in terms of the maximum individual dose (the largest expected dose that any person could receive for a particular accident); (2) impacts to the exposed portion of the population in terms of the potential for additional latent cancer fatalities due to a radioactive release (*i.e.,* cancer fatalities that are in excess of those latent cancer fatalities which the general population would normally experience from all causes over a long-term period following the release); and (3) impacts to the environment in terms of land area contaminated at or above specified levels.

In considering the launch of the MSL mission during late 2011, NASA identified factors that might have an impact on the environmental consequences described in the existing EIS. DOE in cooperation with NASA evaluated their risk assessment supporting the EIS against up to date information regarding the MSL mission and use of the 2011 launch opportunity. Factors in that evaluation included the launch vehicle selection, duration and time of the launch period, meteorology for the launch period, launch trajectories, and ground processing of the launch vehicle.

DOE evaluated the changes associated with the 2011 launch in terms of potential changes in (1) impacts to individuals in terms of the maximum individual dose; (2) impacts to the exposed portion of the population in terms of the potential for additional latent cancer fatalities due to a radioactive release; and (3) impacts to the environment in terms of land area contaminated at or above specified levels. DOE documented the results of this evaluation and provided the results to NASA. DOE's conclusion is that the updated results are consistent with results reported in the MSL FEIS and summarized in the 2006 MSL ROD and the preceding section of this ROD.

Non-Radiological Considerations

The non-radiological environmental impacts from a normal launch in 2011 also remain unchanged from those expected for the 2009 launch opportunity.

Similarly, expected non-radiological impacts associated with potential launch accidents are also unchanged from those for the 2009 launch opportunity. However, because there has been some recent heightened general interest in the non-radiological hazards associated with reentering space objects, the following additional information is provided.

Consistent with the FEIS, after the launch vehicle clears land, debris from an accident including the MSL spacecraft, would be expected to fall over the Atlantic Ocean. Under certain launch accident conditions, there is a small probability the spacecraft with a full propellant load (475 kg) could reenter prior to achieving orbit and impact land in southern Africa or Madagascar. The probability of such an accident occurring and leading to a land impact is on the order of 1 in 20,000. As indicated in the FEIS, the MSL spacecraft's propellant is hydrazine. The overall risk of an individual injury resulting from the land impact of a spacecraft and exposure to hydrazine is less than one in 100,000.

In other potential accident scenarios (*i.e.,* those occurring after achievement of the park orbit), the spacecraft could reenter from orbit, potentially impacting land anywhere between 36° north or south of the equator. Under these conditions, only a small portion (*i.e.* less than about 5%) of the full propellant load could reach the ground if the tanks did not burst due to reentry heating effects and release their contents into the atmosphere. The overall probability of this type of accident occurring is less than 1 in 200. In this type of accident it is extremely unlikely that there would be any hydrazine residual remaining inside the propellant tanks at the point of ground impact.

Incomplete and Unavailable Information

As is typical for complex, long lead time NASA missions such as MSL, several technical issues that could affect the results summarized in this modified ROD will undergo continuing evaluation as a part of a more detailed safety analysis and as part of other non-mission specific test and analysis work by NASA and DOE. Issues that continue to be evaluated include:

- The solid propellant fire environment and its potential effect on the release of PuO_2 from an MMRTG,
- The behavior of solid PuO_2 and PuO_2 vapor in the fire environment and the potential for PuO_2 vapor to permeate the graphite components in an MMRTG,
- The mechanical response of the MMRTG for the mission-specific configuration of the MSL mission, and
- The risks (*i.e.,* probabilities and effects) from release of spacecraft and launch vehicle propellants in various launch accident scenarios.

Results from these ongoing analyses and tests are not anticipated to substantively affect the environmental evaluations summarized in this modified ROD. However, NASA will review such results as they become available and will consider their potential effects on the MSL

environmental impact analyses and, as appropriate, the need for additional MSL environmental documentation.

Conclusion

Based on CEQ regulations, specifically 40 CFR 1502.9(c)(1), the two situations in which an agency must issue a supplemental EIS are: (i) Substantial changes in the proposed action that are relevant to environmental concerns or (ii) significant new circumstances or information relevant to environmental concerns associated with the proposed action. Using these criteria, NASA has evaluated its updated MSL mission information, including the changes to the mission associated with a 2011 launch opportunity and further considered DOE's evaluation of the existing EIS risk assessment. Based upon these evaluations, NASA has concluded there are no substantial changes relevant to environmental concerns associated with the updated mission information and change in launch opportunity from 2009 to 2011. NASA has further concluded there are no significant new circumstances or information relevant to environmental concerns associated with the updated mission information and change in launch opportunity from 2009 to 2011.

Decision

Based upon all of the forgoing, including consideration of the 2006 Record of Decision, it is my decision to complete development and preparations for launch of the proposed MSL mission during November–December 2011, and to operate the mission using an MMRTG as the primary power source for the rover.

Edward J. Weiler, NASA Science Mission Directorate (SMD) Associate Administrator

Signed: August 23, 2010

Dated: January 14, 2011.

Charles J. Gay,

Deputy Associate Administrator, Science Mission Directorate.

[FR Doc. 2011–1366 Filed 1–21–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Comment Request: Innovative Technology Experiences for Students and Teachers (ITEST) Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by March 25, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Innovative Technology Experiences for Students and Teachers (ITEST) Program.

Evaluation for the National Science Foundation

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of request: Initial Clearance.

Abstract

Innovative Technology Experiences for Students and Teachers (ITEST) is a National Science Foundation program that responds to current concerns and projections about the growing demand for professionals and information technology workers in the U.S. and seeks solutions to help ensure the breadth and depth of the STEM workforce. Information technologies are integral to both the workplace and everyday activities of most Americans. They are part of how people learn, how they interact with each other and information, and how they represent and understand their world. Attaining a basic understanding of these technologies and mastery of essential technical skills is a requirement for anyone to benefit from innovation in the modern world. The technological growth of the nation depends on a technologically literate citizenry. ITEST is designed to increase the opportunities for students and teachers to learn about, experience, and use information technologies within the context of science, technology, engineering, and mathematics (STEM), including Information Technology (IT) courses. Supported projects are intended to provide opportunities for K–12 children and teachers to build the skills and knowledge needed to advance their study, and to function and to contribute in a technologically rich society. Additionally, exposure to engaging applications of IT is a means to stimulate student interest in the field and an important precursor to the academic preparation needed to pursue IT careers.

The ITEST program evaluation will characterize the variety of ITEST projects, measure the rigor of individual project evaluations, estimate outcomes for students and teachers involved in a sample of projects, and identify exemplary project models. In order to accomplish these tasks, the ITEST program evaluation will employ a mixed-method approach including case studies, quasi-experiments, and extensive document review. This information collection request will include a series of protocols to be used while conducting site visit interviews, a list of documents to be requested during visits, and a student-survey instrument to measure project outcomes.

Estimate of Burden

Respondents: Individuals.

Frequency: Annual.

Estimated Number of Respondents: 1,402.

Estimated Burden Hours on Respondents: 1,052 hours.

Dated: January 19, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–1373 Filed 1–21–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 8, 2011, 9 a.m.–5:30 p.m. February 9, 2011, 9 a.m.–2 p.m.

Place: Arlington, Virginia 22203. Additional meeting location information will be available at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp*.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230. Telephone Numbers: (703) 292–4216, 703–292–8040 *mtolbert@nsf.gov*.

Minutes: Minutes may be obtained from the Executive Liaison at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp*.

Purpose of Meeting: To study NSF programs and policies and provide advice and recommendations to the National Science Foundation (NSF) concerning broadening participation in science and engineering.

Agenda:

Tuesday and Wednesday, February 8–9, 2011

Opening Statement by the CEOSE Chair.

Remarks by the Interim Director of the NSF Office of Integrative Activities.

Presentations and Discussions:

✓ Discussion of Plans for the Mini-Symposium on the Science of Broadening Participation

✓ Reports from CEOSE Liaisons to NSF Advisory Committees

✓ Discussion of NSF Responses to CEOSE Recommendations

✓ Review of the Draft "2009–2010 CEOSE Biennial Report to Congress"

✓ Conversation with Dr. Subra Suresh, Director, National Science Foundation

✓ Report on OISE Technical Support to Minority Serving Institutions

✓ Update on the National Science Board Study of the NSF Merit Review Criteria

✓ The State of the National Science Foundation Relative to Diversity and Inclusion

✓ Discussion of Unfinished Business

Dated: January 19, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–1344 Filed 1–21–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunity in Science and Engineering Solicitation of Recommendations for Membership

SUMMARY: The National Science Foundation (NSF) solicits recommendations for membership on the Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173). Recommendations should consist of the name of the recommended individual, the individual's curriculum vita, and an expression of the recommended individual's interest, and include the following contact information: recommended individual's address, telephone number, FAX number, and e-mail address. Self recommendations are accepted.

DATES: Recommendations must be received no later than March 14, 2011.

ADDRESSES: Recommendations should be sent to Dr. Margaret Tolbert, CEOSE Executive Liaison at National Science Foundation, Room 935, 4201 Wilson Blvd., Arlington, VA 22230 or to *mtolbert@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Please see *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.* Call the CEOSE Executive Liaison at 703–292–8040, or send an e-mail message to *mtolbert@nsf.gov.*

SUPPLEMENTARY INFORMATION: Members are appointed by the Director of the NSF to serve on the Committee for a three year term. With appropriate justification, members may be reappointed for only one additional three year term (42 U.S.C. 1885c). CEOSE provides advice to NSF on the implementation of the provisions of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885), and on NSF matters relating to opportunities for the participation in, and advancement of, women, minorities, and persons with disabilities in education, training, and science and engineering research programs (42 U.S.C. 1885c).

NSF is dedicated to the support of education and fundamental research in science, technology, engineering, and mathematics (STEM) disciplines. NSF's mission is to ensure that the United States maintains leadership in scientific discovery and the development of new technologies. Broadening participation in STEM is a vital aspect of the NSF mission, and CEOSE recommendations assist NSF in fulfilling this aspect of its mission.

Recommendations for membership are encouraged from the STEM community, including professional societies, academe, industry, and government. Recommended individuals should possess expertise in a disciplinary or interdisciplinary field(s) supported by NSF, as well as knowledge and experience related to broadening participation by underrepresented groups (women, underrepresented minorities, and persons with disabilities) in STEM. NSF seeks qualified individuals for current and future vacancies. Recommendations will be kept on file for 12 months from the recommendation deadline stated above.

Dated: January 18, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–1272 Filed 1–21–11; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–58; Order No. 652]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional Global Reseller Expedited Package contract. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* January 24, 2011.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On January 14, 2011, the Postal Service filed a notice announcing that it

has entered into an additional Global Reseller Expedited Package (GREP) contract.[1] The Postal Service believes the instant contract is functionally equivalent to the previously submitted GREP contracts, 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 the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 445. The term of the contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3. It may, however, be terminated by either party on not less than 30 days' written notice. *Id.* Attachment 1, at 5.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and applicable annexes;
- 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 instant 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 instant contract from the baseline GREP agreement. It states that the instant contract differs from the contract in Docket No. CP2010–36 pertaining to customer-specific information, *e.g.,* customer's name, address, representative, signatory, notice of postage changes and minimum revenue. *Id.* at 4–5. The Postal Service states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contract's functional equivalency. *Id.* at 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.*

The Postal Service concludes that its filing demonstrates 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. CP2011–58 for consideration of 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 3642. Comments are due no later than January 24, 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. CP2011–58 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than January 24, 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. 2011–1335 Filed 1–21–11; 8:45 am]

BILLING CODE 7710–FW–P

[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, January 14, 2011 (Notice).

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Ocean Council; Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes

ACTION: Notice of Intent To Prepare Strategic Action Plans for the Nine Priority Objectives for Implementation of the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes. Request for comments.

SUMMARY: On July 19, 2010, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes ("National Policy"). That Executive Order adopts the Final Recommendations of the Interagency Ocean Policy Task Force ("Final Recommendations") and directs Federal agencies to take the appropriate steps to implement them. The Executive Order creates an interagency National Ocean Council (NOC) to strengthen ocean governance and coordination, identifies nine priority actions for the NOC to pursue, and adopts a flexible framework for effective coastal and marine spatial planning to address conservation, economic activity, user conflict, and sustainable use of the ocean, our coasts and the Great Lakes.

Purpose: The NOC is announcing its intent to prepare strategic action plans for the nine priority objectives identified in the Final Recommendations and is requesting input on the development of these strategic action plans. (For general information about the NOC and a copy of Executive Order 13547 and the Final Recommendations, *please see: http://www.WhiteHouse.gov/oceans*). Public comments will inform the preparation of the strategic action plans. All comments will be collated and posted on the NOC Web site.

Public Comment: The NOC is seeking public input as it develops the strategic action plans for the priority objectives. To be considered during the development of the draft strategic action plans, comments should be submitted by April 29, 2011. Draft strategic action plans will be released for public review in the summer of 2011, allowing

additional opportunity for the public to provide comments. Plans are expected to be completed by the end of 2011.

In this public comment period, the NOC is interested in comments that address the opportunities, obstacles, and metrics of progress relevant to each of the priority objectives. Comments should take into account that the strategic action plans should address the key areas identified in the Final Recommendations, including, as appropriate, the importance of integrating local, regional, and national efforts.

The NOC is requesting responses to the following questions for each of the priority objectives:

- What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?
- What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?
- What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Comments should be submitted electronically at *http://www.WhiteHouse.gov/administration/eop/oceans/comment* or can be sent by mail to: National Ocean Council, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this request can be found at *http://www.WhiteHouse.gov/oceans*. Questions about the content of this request may be sent to *http://www.WhiteHouse.gov/administration/eop/oceans/contact* or by mail (please allow additional time for processing) to the address above.

SUPPLEMENTARY INFORMATION: On July 19, 2010, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes ("National Policy"). That Executive Order adopts the Final Recommendations of the Interagency Ocean Policy Task Force and directs Federal agencies to take the appropriate steps to implement them. The Executive Order creates an interagency National Ocean Council (NOC) to strengthen ocean governance and coordination, identifies nine priority actions for the NOC to pursue, and adopts a flexible framework for effective coastal and marine spatial planning to address conservation, economic activity, user conflict, and sustainable use of the ocean, our coasts, and the Great Lakes.

The National Policy provides a comprehensive approach, based on science and technology, to uphold our stewardship responsibilities and ensure accountability for our actions to present and future generations. The Obama Administration intends, through the National Policy, to provide a model of balanced, productive, efficient, sustainable, and informed ocean, coastal, and Great Lakes use, management, and conservation. The Final Recommendations provide an implementation strategy that describes a clear set of priority objectives that our Nation should pursue to further the National Policy.

The nine priority objectives seek to address some of the most pressing challenges facing the ocean, our coasts, and the Great Lakes. The nine priority objectives are identified below. Additional information about each priority may be found at *http://www.WhiteHouse.gov/oceans*.

Objective 1: Ecosystem-Based Management: Adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and the Great Lakes;

Objective 2: Coastal and Marine Spatial Planning: Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States;

Objective 3: Inform Decisions and Improve Understanding: Increase knowledge to continually inform and improve management and policy decisions and the capacity to respond to change and challenges. Better educate the public through formal and informal programs about the ocean, our coasts, and the Great Lakes;

Objective 4: Coordinate and Support: Better coordinate and support Federal, State, Tribal, local, and regional management of the ocean, our coasts, and the Great Lakes. Improve coordination and integration across the Federal Government and, as appropriate, engage with the international community;

Objective 5: Resiliency and Adaptation to Climate Change and Ocean Acidification: Strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change impacts and ocean acidification;

Objective 6: Regional Ecosystem Protection and Restoration: Establish and implement an integrated ecosystem protection and restoration strategy that is science-based and aligns conservation and restoration goals at the Federal, State, Tribal, local, and regional levels;

Objective 7: Water Quality and Sustainable Practices on Land: Enhance water quality in the ocean, along our coasts, and in the Great Lakes by promoting and implementing sustainable practices on land;

Objective 8: Changing Conditions in the Arctic: Address environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes; and

Objective 9: Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure: Strengthen and integrate Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system and integrate that system into international observation efforts.

These priority objectives are meant to provide a bridge between the National Policy and action on the ground and in the water, but they do not prescribe specific actions or responsibilities. The NOC is responsible for developing strategic action plans to achieve the priority objectives. As envisioned, the plans will:

- Identify specific and measurable near-term, mid-term, and long-term actions, with appropriate milestones, performance measures, and outcomes to fulfill each objective;
- Consider smaller-scale, incremental, and opportunistic efforts that could build upon existing activities, as well as more complex, larger-scale actions that have the potential to be truly transformative;
- Identify key lead and participating agencies;
- Identify gaps and needs in science and technology; and
- Identify potential resource requirements and efficiencies; and steps for integrating or coordinating current and out-year budgets.

The plans will be adaptive to allow for modification and addition of new actions based on new information or changing conditions. Their effective implementation will also require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component. Implementation of the National Policy for the stewardship of the ocean, our coasts, and the Great Lakes will recognize that different legal regimes, with their associated freedoms, rights, and duties, apply in different maritime zones. The plans will be implemented in a manner consistent

with applicable international conventions and agreements and with customary international law as reflected in the Law of the Sea Convention. The plans and their implementation will be assessed and reviewed annually by the NOC and modified as needed based on the success or failure of the agreed upon actions.

The NOC is committed to transparency in developing strategic action plans and implementing the National Policy. As the NOC develops and revises the plans, it will ensure substantial opportunity for public participation. The NOC will also actively engage interested parties, including, as appropriate, State, Tribal, and local authorities, regional governance structures, academic institutions, nongovernmental organizations, recreational interests, and private enterprise.

Ted Wackler,

Deputy Chief of Staff, OSTP.

[FR Doc. 2011–1316 Filed 1–21–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 27, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 27, 2011 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 20, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1513 Filed 1–20–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63717; File No. SR–Phlx–2010–145]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Establishment of Remote Specialists

January 14, 2011.

I. Introduction

On October 14, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow certain Phlx exchange members to act as option specialists that are not physically present on the option trading floor. The proposed rule change was published for comment in the **Federal Register** on November 2, 2010.[3] On January 11, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order provides notice of filing of Amendment No. 1 and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend Phlx Option Rules 501, 506, 507, 1014, and 1020 to provide for remote specialists under limited circumstances and amend its Option Floor Procedure Advices[5] B–3 and E–1 to reflect the new category of remote specialist.

Currently, Phlx has several types of Registered Options Traders ("ROTs")[6] that can register as market makers on the Exchange, including specialists, Streaming Quote Traders ("SQTs"),[7] and Remote Streaming Quote Traders ("RSQTs").[8] Specialists are floor-based Exchange members who are registered as options specialists pursuant to Rule 1020(a). An SQT has a physical presence on the options floor (though they may be "in-crowd" or "out-of-crowd") and is authorized to generate and submit option quotations electronically in options to which such SQT is assigned, but may only do so when he or she is physically present on the floor of the Exchange. An RSQT, on the other hand, has no physical trading floor presence and instead is authorized to generate and submit option quotations electronically in options to which such RSQT has been assigned. The various market making requirements applicable to each category of market maker are set forth in Rule 1014. Rules 500 through 599 (the "Allocation and Assignment Rules") generally describe the process for application and appointment of specialists, SQTs and RSQTs, as well as the allocation of classes of options to them.[9]

Accordingly, while Phlx's rules provide for remote market-making ROTs (*i.e.,* RSQTs), they do not provide for remote specialists. Rather, Phlx's rules currently require that each options class and series listed on the Exchange have a specialist physically present on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63192 (October 27, 2010), 75 FR 67427 ("Notice").

[4] On December 16, 2010, the Exchange extended the period for Commission consideration of its proposal to January 14, 2011. *See* 15 U.S.C. 78s(b)(2)(A)(ii)(II) (concerning the ability of the self-regulatory organization that filed a proposed rule change to extend the time period for Commission consideration of its proposal).

[5] Phlx's Options Floor Procedure Advices ("OFPAs" or "Advices") are part of the Exchange's minor rule plan ("MRP" or "Minor Rule Plan"), which consists of Advices with preset fines, pursuant to Rule 19d–1(c) under the Act (17 CFR 240.19d–1(c)). *See e.g.,* Securities Exchange Act Release No. 50997 (January 7, 2005), 70 FR 2444 (January 13, 2005) (SR–Phlx–2003–40) (order approving the Exchange's Options Floor Broker Management System). As this time, Phlx is not proposing to change any of the fines that are applicable under any of the Advices.

[6] A ROT is a member who has received permission from the Exchange to trade in options for his own account. Phlx also has Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(l)(i)(A). Specialists may likewise receive Directed Orders. Further, Phlx rules also provide for non-streaming ROTs ("non-SQT ROT"), which can make markets in certain options on an issue-by-issue basis. *See* Rule 1014(b)(ii)(C).

[7] *See* Rule 1014(b)(ii)(A).

[8] *See* Rule 1014(b)(ii)(B).

[9] The Allocation and Assignment Rules also indicate under what circumstances new allocations may not be made. *See, e.g.,* Supplementary Material .01 to Rule 506.

options floor ("floor-based specialist").[10] The Exchange notes that, historically, a floor-based specialist was required for each options class and series, consistent with the traditional model of an open outcry auction market featuring trading crowds at physical trading posts on the floor and Floor Brokers [11] that represent orders on the floor on behalf of others.[12] In addition to its floor-based trading environment, Phlx also operates an electronic system to execute option orders,[13] resulting in a hybrid-model options market that combines a traditional open outcry auction market trading floor with electronic trading (the "current Phlx market").[14]

The Exchange notes that it has found it to be difficult at times, if not impossible, to allocate certain option products. For example, the Exchange has found that specialists may, at times, relinquish their options privileges, when, for example, the underlying securities are involved in a takeover, a merger/acquisition situation, or some type of rights offering.[15] Without a floor-based specialist that is willing to retain (or accept) allocation of an option, the Exchange may not list such options pursuant to its current rules. This, in turn, may negatively impact market participants and investors to the extent that the sudden delisting of a Phlx option limits their choice of execution venues. As discussed below, Phlx's proposed rule change is intended to address the difficulty that Phlx has faced in allocating options where no floor-based specialists are willing to accept the allocation. Specifically, Phlx proposes to allow for remote specialists, as it currently does for RSQTs, in order to expand the universe of market participants that could assume the role of specialist and help ensure the listing, or continued listing, of options on Phlx.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

By providing for Remote Specialists, the Commission believes that Phlx's proposal will allow it to list, or continue listing, an option in which it does not have a registered floor-based specialist. The concept of a Remote Specialist would be similar to the existing class of RSQTs, and several rules that are presently applicable or unique to RSQTs would be expanded to encompass Remote Specialists. Such provisions are generally reflective of the "remote" nature of a Remote Specialist and are intended to accommodate the unique circumstances of a remote quoting specialist. However, the quoting obligations applicable to a Remote Specialist would be heightened over that which is applicable to RSQTs to reflect their status as "specialists" under Exchange rules. Accordingly, all specialists, whether floor-based or remote, would be subject to similar requirements and similar privileges. Specific details of various provisions in the Exchange's proposed rule change are discussed further below.

Specialist Rights and Obligations

Phlx proposes to define "remote specialist" by amending Rule 1020 to state that a remote specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options, if the Exchange determines that it cannot allocate such options to a non-remote (*i.e.,* floor-based) specialist. As provided in proposed Rule 501(f)(iii), a Remote Specialist would have all the rights and obligations of a specialist, unless Exchange rules provide otherwise. Further, Phlx proposes to underscore this principle by indicating in Rule 1020(a) that the term "specialist" includes a Remote Specialist, as defined in Rule 1020(a)(ii), that is registered pursuant to Rule 501 and that a Remote Specialist has all the rights and obligations of an options specialist on the Exchange.

Becoming a Remote Specialist

The Exchange also proposes to amend Rule 501, which generally deals with the process of applying for approval to be a specialist, to indicate that in certain circumstances RSQTs may seek to register as Remote Specialists. Specifically, the process for becoming a Remote Specialist would be a two-step process.[18] A member would first need to qualify and register as a market maker on the Exchange by becoming approved as an RSQT pursuant to Rule 507.[19] Then, if the RSQT wished to become a Remote Specialist, it would need to apply separately to become a Remote Specialist pursuant to the separate process set forth in Rule 501. Proposed Rule 501(f) provides that RSQTs may submit an application to be an approved specialist unit [20] and the Exchange may approve such application in one or more options. Under Rule 501(f)(i), a Remote Specialist could function as a specialist in one or more options only if the Exchange determines that it cannot allocate such option(s) to a floor-based specialist.[21]

The proposed rule would require that each Remote Specialist be available and reachable at all times during trading hours for the product(s) allocated to such specialist.[22] Accordingly, a Remote Specialist would be required to provide Exchange staff and members with telephonic and/or electronic communication access to such specialist and its associated staff at all times during trading hours.[23]

Additionally, Phlx proposes to amend Rule 501 and 506 to indicate that back-up specialist arrangements and assistant specialist requirements are not applicable to Remote Specialists.[24] In support of this provision, the Exchange notes its belief that the rationale for

[10] The Exchange states in the Notice that at least one exchange that uses a specialist system has allowed certain option series to trade without a designated lead market maker (specialist).

[11] *See* Rule 1060.

[12] *See* Notice, *supra* note 3, at 75 FR 67428.

[13] *See* Rule 1080 regarding the Exchange's electronic order, trading, and execution system.

[14] The current Phlx market model combining open outcry and electronic trading is also used by other options exchanges, such as Chicago Board Options Exchange, Inc., NYSE Amex LLC and NYSE Arca, Inc. Only electronic options trading is done on other exchanges, such as the International Securities Exchange, LLC and The NASDAQ Stock Market LLC.

[15] *See* Notice, *supra* note 3, at 75 FR 67428.

[16] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] Proposed Rule 507(f) would state that nothing in Rule 507 shall be construed to automatically qualify an RSQT to be a Remote Specialist on the Exchange.

[19] For all RSQT application and approval criteria, *see* Rule 507(a)(i)(A) through (a)(i)(G).

[20] A "specialist unit," including a Remote Specialist unit, may have one or more individual "specialists."

[21] Additionally, in light of the proposed off-floor Remote Specialist, Phlx proposes to modify Rule 506(c) to require that the Exchange's decisions regarding allocation of specialist privileges be not only communicated in writing to *floor* members, but also communicated in writing to all Exchange members (both floor-based and off-floor).

[22] *See* Proposed Rule 501(f)(ii). *See also* OFPA E–1 (Required Staffing of Options Floor). A Remote Specialist would be required to have a representative available during the times required by that OFPA.

[23] To the extent necessary, the Exchange represents that it would announce such communication arrangements to its members via an Options Trading Alert ("OTA") or Options Regulatory Alert ("ORA").

[24] The Exchange also proposes to clarify in Advice E–1 that a Remote Specialist is exempt from the obligation to have personnel on the trading floor, while retaining the obligation to have a representative available telephonically.

requiring designation of an assistant specialist and a back-up specialist in the floor-based context is antiquated in the context of the Exchange's electronic-based trading system, in which assigned RSQTs, in conjunction with other assigned market makers on the Exchange, are able to provide liquidity in the event of a specialist's temporary absence.[25] Further, a similar class of remote market makers on Phlx (RSQTs) does not have back-up personnel requirements.[26]

Quoting Obligations and Priority

Remote Specialists would be subject to all of the obligations of a floor-based specialist on the Exchange, except where otherwise noted in the Exchange's rules.[27] Specifically, the Exchange proposes to amend Rule 1014(b)(ii)(D)(2) to provide that Remote Specialists in a particular option shall be responsible to quote two-sided markets in that option to the same extent as on-floor specialists would be required to do. The Exchange further proposes to amend Rule 1014(b)(ii)(D)(1) to state that the RSQT quoting requirements are not applicable to RSQTs when they are acting in the capacity of Remote Specialist. The intent of this provision is to establish equivalent quoting requirements as between on-floor specialists and Remote Specialists.

Currently, Rule 1014 provides that quoting obligations do not apply to RSQTs in certain types of options products and establishes an exemption for RSQTs and other market makers from the obligations set forth in Rule 1014 in certain categories of products. The Exchange proposes to add new language to indicate that these exemptions apply to RSQTs only when they are acting as RSQTs, and would not apply to RSQTs when they are functioning as Remote Specialists in particular options.

Further, the Exchange proposes to amend sub-paragraph (b)(ii)(B) of Rule 1014 to clarify that an RSQT cannot simultaneously quote both as RSQT and as Remote Specialist in a particular security. That is, if an RSQT is a Remote Specialist in a particular security, the Remote Specialist must make a market as a specialist and may not make a market as an RSQT in that particular security.[28] Additionally, the Exchange proposes to add Remote Specialists to Commentary .05(c)(ii) of Rule 1014 to reflect that Remote Specialists will be treated similar to RSQTs and out-of-crowd SQTs for priority purposes under that Rule because they do not engage in open outcry floor trading.

In addition, Commentary .05(b) to Rule 1014 states that SQTs and RSQTs can submit orders electronically. The Exchange is amending Commentary .05(b) to provide that Remote Specialists also may submit quotes electronically. Further, Commentary .05(c)(i) provides that if a Floor Broker presents a non-electronic order in an option assigned to an RSQT or an off-floor SQT, such RSQT or SQT may not participate in trades stemming from the non-electronic order unless the order is executed at the price quoted by the non-crowd RSQT or SQT at the time of execution. The Exchange proposes to include Remote Specialists in Commentary .05(c)(i) to establish priority for Remote Specialists that is coextensive with the priority afforded in that Rule to RSQTs and out-of-crowd SQTs.

The Commission believes that these provisions are appropriate to set forth equivalent obligations and standards applicable to Remote Specialists that are equivalent to the obligations and standards applicable to floor-based specialists. The Commission believes that a specialist must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify receiving unique benefits available to the specialist. The Commission believes that Phlx's rules impose such affirmative obligations on Remote Specialists that choose to operate remotely and notes that, under the proposal, Remote Specialists acting from a remote location would still be required to meet the obligations of a floor-based specialist.[29] Furthermore, the Commission believes that RSQTs that act as Remote Specialists where no on-floor specialists are willing to accept, or retain, an option allocation, would provide or continue to provide a market that would not otherwise exist on the Exchange, which should benefit traders, investors, and public customers making hedging and trading decisions. Further, the proposed rules clearly provide that an RSQT that becomes a Remote Specialist in a particular security must make a market in that security as a specialist and may not make a market as an RSQT in that particular security.

OFPA and Advices

The Exchange also proposes to clarify several OFPAs regarding a Remote Specialist's off-floor electronic quoting and trading capabilities. Particularly, the Exchange is amending Advice B–3 to state that a Remote Specialist is exempted from the requirement that an ROT, including a specialist, trade a certain percentage of volume on the Exchange in person. The change reflects the fact that a Remote Specialist would not be physically present on the Exchange's trading floor and would instead submit quotes and orders remotely. Additionally, the Exchange is deleting Advice A–7 (specialist responsibilities for cancellations) and Advice A–10 (specialists trading the book) as specialists are no longer agents for the book with respect to Advice A–10, and both Advices are no longer required in light of subsequent developments in the Exchange's electronic trading and communication capabilities.[30]

Surveillance

Finally, the Exchange represents that it has developed surveillance procedures for its auction and electronic markets and will use the surveillance procedures now in place to perform surveillance of Remote Specialists.[31]

Accelerated Approval

In Amendment No. 1, the Exchange clarifies the role of a RSQT acting in the capacities of both a RSQT and a Remote Specialist to state that when acting as a Remote Specialist in specifically allocated classes the Remote Specialist will have all the same obligations that are applicable to Specialists, including continuous quoting obligations.[32] Amendment No. 1 also amended proposed Rule 501(f)(ii) to require a Remote Specialist to provide Exchange staff with either telephonic or electronic communication access (as originally proposed, only telephonic access was specified). Finally, Amendment No. 1

[25] In addition, the Exchange notes that nearly all option issues traded on Phlx are traded on multiple exchanges. As such, the historical risk that is addressed by the assistant/backup requirement (namely, the ability of the Exchange to foster the provision of liquidity) is diminished. *See* Notice, *supra* note 3, at 75 FR 67429.

[26] *See* Notice, *supra* note 3, at 75 FR 67429, n.20.

[27] *See* Proposed Rule 501(f)(iii).

[28] As an example of the operation of the proposed rules wherein an RSQT may function as a traditional RSQT and also function as a Remote Specialist, if an RSQT is allocated two option classes as a Remote Specialist, in those two classes the Remote Specialist will have the very same quoting (market making) requirements that are currently applicable to all specialists, including continuous quoting obligations. In the remaining classes to which an RSQT is appointed, the RSQT will have the same quoting (market making) requirements that are applicable to all RSQTs. The RSQT will not be able to submit quotes or act as RSQT in the two allocated Remote Specialist classes. *See* Amendment No. 1 to File No. SR–Phlx–2010–145 at 15 n.29 (January 11, 2011).

[29] *See id.*

[30] *See id.* at 17.

[31] *See* Notice, *supra* note 3, at 75 FR 67431.

[32] *See* Amendment No. 1, *supra* note 28, at 15 n.29.

proposes to delete (rather than amend, as originally proposed) Advices A–7 and A–10, which the Exchange believes are no longer necessary for the reasons discussed above. Because the changes proposed in Amendment No. 1 are minor changes to the proposal that do not raise material issues, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[33] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–2010–145 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–2010–145. 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–2010–145 and should be submitted on or before February 14, 2011.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Phlx–2010–145), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1297 Filed 1–21–11; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63718; File No. SR–Phlx–2011–005]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

January 14, 2011.

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 January 5, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Select Symbols in Section I of the Exchange's Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

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 list of Select Symbols[3] in Section I of the Exchange's Fee Schedule, titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols. Specifically, the Exchange is proposing to remove Motorola, Inc. ("MOT") and add Motorola Solutions, Inc. ("MSI") due to a recent corporate action which took place on January 4, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposed removal of MOT and the proposed addition of MSI from the Select Symbols are both equitable and reasonable because those amendments would uniformly apply to all categories of participants.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Select Symbols" refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I of the Exchange's Fee Schedule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

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.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–005 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–2011–005. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–005, and should be submitted on or before February 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1298 Filed 1–21–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63716; File No. SR–NASDAQ–2011–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Application of NASDAQ Rule 4611(d)

January 14, 2011.

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 January 6, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to delay the application of NASDAQ Rule 4611(d) for an additional 90 days. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2010, the Commission approved SR–NASDAQ–2008–104 which established new standards for sponsored access as set forth in NASDAQ Rule 4611(d), NASDAQ's Market Access Rule.[4] On November 3, 2010, the Commission adopted Rule 15c–3 [sic] governing risk management controls by broker-dealers with market access which has an effective date of January 14, 2011 and a compliance date of July 14, 2011.[5] In response to the new SEC regulation, NASDAQ plans to modify NASDAQ Rule 4611 and to make it effective prior to July 14, 2011 Accordingly, NASDAQ is proposing to delay for an additional 90 days the implementation of new NASDAQ Rule 4611(d).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 61345 (Jan. 13, 2010) ("NASDAQ Market Access Approval Order").

[5] Securities Exchange Act Release No. 63241 (Nov. 3, 2010).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal is consistent with these obligations because market participants require additional time to comply with the new market access provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[8]

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.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange must provide 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 on which the Exchange filed the proposed rule change. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission hereby grants this request. *See* 17 CFR 240.19b–4(f)(6)(iii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–008, and should be submitted on or before February 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1296 Filed 1–21–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0010]

Future Systems Technology Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Tenth Panel Meeting.

DATES: February 8, 2011, 10 a.m.–5 p.m., *Location:* The Latham Hotel, Presidential Ball Room.

ADDRESSES: 3000 M Street, NW., Washington, DC 20007.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: The Panel, under the Federal Advisory Committee Act of 1972, as amended, (hereinafter referred to as "the FACA") shall report to and provide the Commissioner of Social Security independent advice and recommendations on the future of systems technology and electronic services at the agency five to ten years into the future. The Panel will recommend a road map to aid SSA in determining what future systems technologies may be developed to assist in carrying out its statutory mission. Advice and recommendations can relate to SSA's systems in the area of Internet application, customer service, or any other arena that would improve SSA's ability to serve the American people.

Agenda: The Panel will meet on Tuesday, February 8, 2011 from 10 a.m. until 5 p.m. The agenda will be available on the Internet at *http://www.ssa.gov/fstap/index.htm* or available by e-mail or fax on request, one week prior to the starting date.

During the tenth meeting, the Panel may have experts address items of interest and other relevant topics to the Panel. This additional information will further the Panel's deliberations and the effort of the Panel subcommittees.

The Panel will hear Public comments on Tuesday, February 8, 2011, from 4:30 p.m. until 5 p.m. Individuals interested in providing comments in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a

time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify. Individuals providing public comment are limited to a maximum five-minute, verbal presentation. In lieu of public comments provided in person, individuals may provide written comments to the panel for their review and consideration. Comments in written or oral form are for informational purposes only for the Panel. Public comments will not be specifically addressed or receive a written response by the Panel.

For individuals that are hearing impaired and in need of sign language services please contact the Panel staff as outlined below at least 10 business days prior to the meeting so that timely arrangements can be made to provide this service.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to SSA, Future Systems Technology Advisory Panel, Room 500, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–0001; Telephone at 410–966–2203; Fax at 410–966–7474; or e-mail to *FSTAP@ssa.gov.*

Karen Palm,

Designated Federal Officer, Future Systems Technology Advisory Panel.

[FR Doc. 2011–1309 Filed 1–21–11; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Putnam-Cumberland, TN—Improve Power Supply

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR Parts 1500–1508) and the Tennessee Valley Authority's (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA will prepare an environmental assessment (EA) or an environmental impact statement (EIS) to address the potential environmental effects of proposed electrical power supply improvements in the Putnam and Cumberland region of east-central Tennessee. The purpose of the proposed project is to ensure the reliable transmission of electric power to meet increasing power demands in the project area.

In its environmental review, TVA will evaluate the potential environmental impacts of the construction, operation, and maintenance of proposed new and upgraded power transmission facilities. TVA will develop and evaluate various alternatives, including the No Action Alternative, in the environmental review. Public comments are invited concerning both the scope of the review and environmental issues that should be addressed.

DATES: To ensure consideration, comments on the scope and environmental issues must be postmarked or e-mailed no later than February 22, 2011. If TVA decides to prepare an EIS, a notice of availability of the draft document will be published in the **Federal Register**, and announcements will be placed in local news media.

ADDRESSES: Written comments should be sent to Anita Masters, NEPA Compliance Manager, Tennessee Valley Authority, 1101 Market Street (LP 5U), Chattanooga, Tennessee 37402–2801. Comments may be e-mailed to *newtransline@tva.gov* or entered online at *http://www.tva.gov/environment/reports/putnam/index.htm.*

FOR FURTHER INFORMATION CONTACT: Christopher A. Austin, Civil Engineer, Tennessee Valley Authority, 1101 Market Street (MR 4G), Chattanooga, Tennessee 37402–2801; *telephone:* 800–362–4355; *e-mail: newtransline@tva.gov.* Project information is available online at *http://www.tva.gov/power/projects/putnam_cumb/index.htm.*

SUPPLEMENTARY INFORMATION:

Background

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. TVA provides electric power to most of Tennessee and to parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA transmits this power over approximately 16,000 miles of transmission lines.

TVA supplies bulk electric power to Cumberland and Putnam counties and the immediately surrounding areas in east-central Tennessee through an existing network of 26 161-kilovolt (kV) substations and 28 161-kV transmission lines. Population in this area has grown at a rate of almost 1.8 percent per year since 2000. TVA studies indicate that 19 of these substations will not meet acceptable voltage criteria by 2016, and the remaining seven substations will be unable to meet criteria by 2019. Five of the 161-kV transmission lines are expected to become overloaded by summer 2016, and 11 more lines are likely to be overloaded by summer 2019. Long-range studies indicate that either the provision of a 500-kV source or extensive upgrades to existing 161-kV facilities will be required in the Putnam County and Cumberland County area by 2016 to meet anticipated power loads.

Proposed Alternatives

TVA has identified three potential alternatives to meet the identified power supply needs. The first involves upgrading existing transmission lines in the area. This would require replacing conductors (*i.e.,* "wires") on approximately 54 miles of transmission lines and performing other upgrades (*e.g.,* resagging and retensioning conductors and increasing structure heights) on about 115 miles of transmission lines. Extensive equipment upgrades would be required at 11 161-kV substations.

The second potential alternative involves the construction and operation of a new 500-kV substation in western Cumberland County near the existing Campbell Junction 161-kV Substation. The new substation would require an area of 60 to 80 acres. Under this option, TVA would acquire a 300-foot-wide right-of-way, then construct, operate, and maintain two new parallel 500-kV transmission line connections from the new substation to the TVA Roane-Wilson 500-kV Transmission Line. The length of the new lines would likely be less than 2 miles. In addition, following acquisition of a 100-foot-wide right-of-way,TVA would construct, operate, and maintain two new 161-kV transmission line connections on a double-circuit line (*i.e.,* a line consisting of two sets of conductors located on common structures) from the new 500-kV substation to the existing TVA Monterey-Peavine 161-kV Transmission Line. The new connections would likely be less than a mile long. New substation equipment would be installed in the Jamestown, Tennessee, area under this option.

The third alternative involves construction of a new 500-kV substation in Putnam County southwest of Cookeville on a 60- to 80-acre site. As part of this alternative, TVA would acquire a 300-foot-wide right-of-way and construct, operate, and maintain two new parallel 500-kV transmission lines from the proposed substation to the TVA Roane-Wilson 500-kV Transmission Line. These new lines are expected to be less than 2 miles in length. TVA would also acquire right-of-way in order to construct, operate, and maintain four new 161-kV transmission line connections. Two of these would be a double-circuit line located on a 100-foot-wide right-of-way from the new 500-kV substation to the existing TVA Cordell Hull-West Cookeville 161-kV Transmission Line. The other two connections would also be a double-circuit line located on a 100-foot-wide right-of-way from the new 500-kV substation to the Gallatin-West Cookeville 161-kV Transmission Line. About 7 to 10 miles of new right-of-way would be needed for these connections. Additionally, the West Cookeville-South Cookeville 161-kV Transmission Line would be upgraded. New equipment would be installed at the Jamestown 161-kV Substation in Fentress County, Tennessee, and at the Monterey 161-kV Substation in Putnam County under this alternative.

New 500-kV transmission lines would likely utilize self-supporting, laced-steel towers, while new 161-kV lines would probably be mounted on single- and double-pole steel structures. Line construction would require removal of trees within the right-of-way as well as any other nearby tall trees that could endanger safe operation of the line. Construction of the 500-kV support structures would require the excavation of foundations for each of the tower legs. Cranes and other heavy equipment would be used to construct the towers and pull the electrical conductor into place. After construction, the disturbed areas would be revegetated, and the right-of-way would be maintained periodically to control the growth of tall vegetation.

After the completion of scoping, TVA will begin detailed studies for siting the substation and routing the transmission lines using maps, aerial photography, and other relevant data. When the studies have progressed sufficiently, potentially affected landowners will be contacted directly, and additional field surveys will be conducted.

The results of evaluating the potential environmental impacts and other important issues identified in the scoping process, as well as engineering and economic considerations, will be used by TVA in identifying a Preferred Alternative. At this time, the range of alternatives TVA has identified for detailed evaluation includes the No Action Alternative and the three potential Action Alternatives described above. As analyses proceed, one or more alternatives may be eliminated due to technical infeasibility, unacceptable environmental impacts, or unreasonably high economic costs. TVA expects to evaluate multiple sites for the new substation and various routing options for new transmission lines.

Proposed Issues To Be Addressed

The EA or EIS will contain descriptions of the existing environmental and socioeconomic resources within the area that would be affected by construction, operation, and maintenance of the proposed substation, transmission lines, and associated upgrades. Evaluation of potential environmental impacts to these resources will include, but will not necessarily be limited to, the potential impacts on water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, land use, historic and archaeological resources, and socioeconomic resources. The need and purpose of the project will be described. The range of issues to be addressed in the environmental review will be determined, in part, from scoping comments. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Public and Agency Participation

The EA or EIS is being prepared to inform decision makers and the public about the potential environmental effects of TVA's options for meeting anticipated electric power demands in central Tennessee. The draft EA or EIS is anticipated to be available in late 2011. Any changes to this schedule will be posted on the TVA Web site: *http://www.tva.gov/power/projects/putnam_cumb/index.htm.* The environmental review process will also serve to inform the public and the decision makers of the reasonable measures that would be implemented to minimize adverse impacts. Other Federal, State, and local agencies and governmental entities are invited to provide scoping comments. These agencies include, but are not limited to, the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Tennessee Department of Environment and Conservation, and the Tennessee State Historic Preservation Officer.

The public is invited to submit comments on the scope of the environmental review no later than the date given under the **DATES** section of this notice. TVA will conduct a public scoping meeting on January 20, 2011. This open house meeting will begin at 3 p.m. and end at 7 p.m. CST. The meeting will be held at the Willow Place Conference Center, Cascade Hall, located at 225 North Willow Avenue, Cookeville, Tennessee. At the meeting, TVA will present overviews of the proposed project and the environmental review process, answer questions, and solicit comments on the issues of interest to the public. The meeting will be publicized through notices in local newspapers, TVA press releases, on the TVA Web site at *http://www.tva.gov/environment/reports/putnam/index.htm* and in letters to local elected officials.

Dated: January 13, 2011.

Anda A. Ray,

Senior Vice President, Environment and Technology.

[FR Doc. 2011–1222 Filed 1–21–11; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Brunswick-Golden Isles Airport, Brunswick, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Glynn county Airport Commission to waive the requirement that a 16.84-acre parcel of surplus property, located on Glynn County Airport owned and operated land adjacent to, but separated by a public roadway, Brunswick-Golden Isles Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 23, 2011.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Campus Bldg., Ste. 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steve Brian,

Airport Director of Brunswick-Golden Isles Airport at the following address: 295 Aviation Parkway, Ste. 205, Brunswick, GA 31525.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Bldg, Ste. 2–260, Atlanta, GA 30337–2747, (404) 305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Glynn County Airport Commission to release 16.84 acres of surplus property at the Brunswick-Golden Isles Airport. The property will be purchased with intent to expand an existing adjacent, compatible non-aeronautical facility with buffer land along the public roadway that currently separates it from the airport. The location of the land relative to existing or anticipated aircraft noise contours greater than 65ldn are not an issue. The net proceeds from the sale of this property will be used for airport purposes. The proposed use ofthis property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Brunswick-Golden Isles Airport.

Issued in Atlanta, Georgia, on December 29, 2010.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2011–1161 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2011–0001]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2011

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2011 so grantees and subgrantees affected by national or regional emergencies may request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. By this notice, FTA is establishing an Emergency Relief Docket for calendar year 2011.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E56–306, Washington, DC 20590, phone: (202) 366–4011, fax: (202) 366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to title 49 CFR part 601, subpart D, FTA is establishing the Emergency Relief Docket for calendar year 2011. The docket may be opened at the request of a grantee or subgrantee, or on the Administrator's own initiative. When the Emergency Relief Docket is opened, FTA will post a notice on its Web site, at *http://www.fta.dot.gov*. In addition, a notice will be posted in the docket.

In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; via telephone, at: (202) 366–4011; or via fax, at (202) 366–3472, requesting opening of the Docket for that emergency and including the information set forth below.

All petitions for relief from administrative requirements must be posted in the docket in order to receive consideration by FTA. The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at *http://www.regulations.gov*. Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave., SE., Room W12–140, Washington, DC 20590. Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2011–0001. Grantees and subgrantees making submissions to the docket by mail or hand delivery should submit two copies.

In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

A petition for relief shall:

(a) Identify the grantee or subgrantee and its geographic location;

(b) Specifically address how an FTA requirement in a policy statement, circular, agency guidance or rule will limit a grantee's or subgrantee's ability to respond to an emergency or disaster;

(c) Identify the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

A petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

Pursuant to section 604.2(f) of FTA's charter rule (73 FR 2325, Jan. 14, 2008), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor, or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days, the grantee or subgrantee shall follow the procedures set out in this notice.

FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the

three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision. FTA decision letters, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates.

Issued in Washington, DC, this 19th day of January 2011.

Peter Rogoff,

Administrator.

[FR Doc. 2011–1317 Filed 1–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the following project: Honolulu High Capacity Transit Corridor Project, City and County of Honolulu Department of Transportation Services, Honolulu, HI. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Katie Grasty, Environmental Protection Specialist, Office of Planning and Environment, 202–366–9139, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on this project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice are:

Project name and location: Honolulu High Capacity Transit Corridor Project, Honolulu, HI. *Project sponsor:* City and County of Honolulu Department of Transportation Services. *Project description:* The project includes the construction and operation of an elevated steel-wheel-on-steel-rail fixed guideway system that extends near University of Hawai'i West O'ahu, proceeds via Farrington Highway and Kamehameha Highway to Aolele Street serving the Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at the Ala Moana Center in Downtown Honolulu. The total project length is approximately 20 miles and would include the construction of 21 stations, a vehicle maintenance and storage facility, transit centers, park-and-ride lots, traction power substations, and an access ramp from the H–2 Freeway to the Pearl Highlands park-and-ride. *Final agency actions:* Section 4(f) determination; Section 106 Programmatic Agreement; Section 7 Not Likely to Adversely Affect Endangered Species finding; and a Record of Decision dated January 2011. *Supporting documentation:* Final Environmental Impact Statement dated June 2010.

Issued on: January 19, 2011.

Elizabeth S. Riklin,

Deputy Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–1365 Filed 1–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2010–0023]

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on April 23, 2010 (75 FR 21385–21386).

DATES: Comments must be submitted on or before February 23, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Program Analyst, at the National Highway Traffic Safety Administration, Office of Emergency Medical Services, NTI–140, 202–366–2705 or via e-mail at *laurie.flaherty@dot.gov*, 1200 New Jersey Ave., SE., W44–322, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Request for Information, National 9–1–1 Program.

OMB Number: Enter Data.

Type of Request: New information collection request.

Abstract: NHTSA is proposing to issue annual RFIs seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on operational priorities for the National 9–1–1 Program. The National 9–1–1 Program currently provides: Program and policy coordination across Federal agencies and support to Public Safety Answering Points and related State and local agencies for 9–1–1 deployment and

operations. NHTSA intends to use the National 9–1–1 Program to work cooperatively with public and private 9–1–1 stakeholders to establish a vision for the future of 9–1–1 services in the Nation. The RFIs will solicit comments on the priorities and strategies of the National 9–1–1 Program to accomplish its functions, goals and vision. In addition, the RFIs will obtain expressions of interest in participating as partners and will request responses to specific questions, including critical 9–1–1 issues, benefits to stakeholders, available data and methods of collection. These RFIs will NOT seek comment on the 9–1–1 grant program administered by the NHTSA. The RFIs will not include requests for proposals or invitations for bids.

In order to collect information needed to develop and implement effective strategies for the National 9–1–1 Program to provide leadership, coordination, guidance and direction to the enhancement of the Nation's 9–1–1 services, NHTSA must utilize efficient and effective means of eliciting the input and opinions of its constituency groups. If approved, the proposed annual RFIs would assist the National 9–1–1 Program in addressing the myriad of issues posed by implementing new technologies in 9–1–1 services in a systematic, prioritized fashion, with active involvement of its constituency. The results of the proposed annual RFIs would be used to: (1) Identify areas to target programs and activities to achieve the greatest benefit; (2) Develop programs and initiatives aimed at cooperative efforts to enhance 9–1–1 services nationwide; and (3) to provide informational support to States, regions, and localities in their own efforts to enhance 9–1–1 services.

Affected Public: Under this proposed effort, the National 9–1–1 Program would issue annual RFIs, seeking responses to specific questions and soliciting comments on the priorities and strategies used by the National 9–1–1 Program to accomplish its functions, goals and vision, and to obtain expressions of interest in participating as partners. The various entities included in the constituency of the National 9–1–1 Program would be notified of the issuance of each RFI. Likely respondents would include companies, agencies and organizations from all of the constituency groups listed above, particularly local and State emergency communications agencies, professional and industry associations, "traditional" telecommunication service providers, "public safety/emergency" service providers and special interest advocacy organizations. Response is voluntary. The total number of respondents is estimated at 50.

Estimated Total Annual Burden: NHTSA estimates that responses to the questions included in the proposed RFIs would require an average of one hour to complete, for a total of 50 hours. The respondents would not incur any reporting costs from the information collection. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

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 NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 19, 2011.

Michael L. Brown,

Acting Associate Administrator for Research and Program Development.

[FR Doc. 2011–1363 Filed 1–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2011–0003]

National Emergency Medical Services Advisory Council Teleconference Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

Title: National Emergency Medical Services Advisory Council Teleconference Meeting.

ACTION: National Emergency Medical Services Advisory Council (NEMSAC); notice of Teleconference Meeting.

SUMMARY: The NHTSA announces a teleconference meeting of the NEMSAC to be held on February 9, 2011. This notice announces the date, time and call-in information for the meeting, which will be open to the public. The purpose of NEMSAC is to serve as a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The teleconference meeting will be held on February 9, 2011 from 2 p.m. to 4 p.m. EST. A public comment period will take place on February 9, 2011 between 3:30 p.m. to 3:45 p.m. EST. Comment Date: Written comments or requests to make oral presentations must be received by February 4, 2011.

ADDRESSES: The meeting will be held via teleconference only. Members of the public who wish to obtain the call-in number, access code, and other information for the teleconference may contact Drew Dawson as listed in the **FOR FURTHER INFORMATION CONTACT** section by February 4, 2011.

Persons may request time to make an oral presentation. Persons may also submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and must be received by February 4, 2011.

All submissions received must include the docket number, NHTSA–2011–0003, and may be submitted by any one of the following methods: (1) You may submit comments by e-mail to *drew.dawson@dot.gov* or *noah.smith@dot.gov;* or (2) you may submit comments by Fax to (202) 366–7149.

An electronic copy of this document may be downloaded from the **Federal Register's** home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will hold a meeting on Wednesday February 9, 2011, via teleconference.

Agenda of Council Teleconference Meeting, February 9, 2011

The tentative agenda includes the following:

Wednesday February 9, 2011

(1) Opening Remarks—Chair and Designated Federal Officer.

(2) Introduction of Members and all in attendance.

(3) Overview of Health Care Reform and Emergency Medical Services.

(4) Other Business.

(5) Public Comment Period.

(6) Next Steps and Future Meetings.

While the entire meeting is open to the public, the public comment period will take place on February 9, 2011 between 3:30 and 3:45 p.m. EST.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on February 9, 2011 between 3:30 and 3:45 p.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Individuals wishing to register for attendance in the teleconference must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than February 4, 2011. There will be limited call-in lines, so please register early. Pre-registration is necessary to enable proper arrangements. Minutes of the NEMSAC Meeting will be available to the public online at *http://www.ems.gov*.

Issued on: January 19, 2011.

Michael L. Brown,

Acting Associate Administrator for Research and Program Development.

[FR Doc. 2011–1364 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35460]

CSX Transportation, Inc.—Temporary Trackage Rights—Norfolk Southern Railway Company

Pursuant to a written trackage rights agreement dated January 16, 2011, Norfolk Southern Railway Company (NSR) has agreed to grant CSX Transportation, Inc. (CSXT) temporary overhead trackage rights generally between CSXT's connection to NSR's tracks at Deepwater, W.Va., milepost V434.1 located on the Vaco Branch via Alloy, W.Va., east to the connection with the Vaughn Railroad Company at milepost WV227.6, including all necessary tracks designated for the purposes of movement by NSR's operating officer, including head and tail room as necessary. The lines in question total 12.3 miles of track.

The exemption became effective on January 18, 2011, and will expire on July 1, 2011.[1] CSXT explains that the temporary trackage rights will permit it to resume overhead rail service to the Fola Coal Mine at Bickmore, W.Va.[2]

As a condition to this exemption, any employees affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

An original and 10 copies of all pleadings, referring to Docket No. FD 35460, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

[1] By decision served on January 18, 2011, the Board granted CSXT's request for waiver of 49 CFR 1180.4(g) and allowed the exemption to become effective immediately.

[2] CSXT used to use its own line to serve this mine, but it cannot do so now, because a necessary bridge has been closed due to safety concerns since September 2010. After the closure, CSXT had been providing service to the mine over NSR lines pursuant to a detour agreement. That agreement has now expired. NSR is willing to continue to allow CSXT to use its lines to reach the mine, but NSR now wishes that such service be provided through temporary trackage rights. CSXT expects the bridge to be in service again by July 1, 2011.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 18, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–1300 Filed 1–21–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VOV)]

Proposed Information Collection (Veterans Benefits Administration (VBA) Voice of the Veteran (VOV) Pilot Surveys) 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 new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments information needed to determine beneficiary satisfaction with benefit application and servicing processes for the VBA Compensation and Pension (C&P) Service, Education (EDU) Service, Vocational Rehabilitation and Employment (VR&E) Service and Loan Guaranty (LGY) Service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 25, 2011.

ADDRESSES: Submit written comments on the collection of information through the 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 *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–New (VOV)" 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: Veterans Benefits Administration (VBA) Voice of the Veteran (VOV) Pilot Surveys.

a. Compensation and Pension (C&P) Service Surveys

J.D. Power will be pilot testing three survey instruments for the Compensation and Pension (C&P) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with C&P into two categories—Enrollment in a Benefit and Servicing of a Benefit. There will be one survey instrument for the Enrollment category that will be used for both compensation and pension claimants; compensation beneficiaries and pension beneficiaries will receive separate Servicing instruments. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaires will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot C&P Enrollment questionnaire will include individuals who have received a decision on a compensation or pension benefit claim within 30 days prior to the fielding period. The sample will be stratified as follows: (1) Type of benefit (*i.e.,* Compensation, Pension), (2) claimants who were found eligible, (3) claimants who were found ineligible and are not appealing their claim. The survey pool for the pilot Compensation servicing questionnaire will include individuals who have been receiving compensation benefits for at least 6 months or individuals who received a decision on a compensation claim 6–18 months prior to the field period. The sample will be stratified as follows: (1) Individuals who were granted a decision, are receiving benefits and not appealing their benefit, (2) individuals who were granted a decision, are receiving benefits and are appealing their benefit, (3) individuals who were denied benefits and are appealing, (4) individuals who were denied benefits and are not appealing. The survey pool for the pilot Pension servicing questionnaire will include individuals who have been receiving pension benefits for at least 6 months or individuals who received a decision on a pension claim 6–18 months prior to the field period. The sample will be stratified as follows: (1) Individuals who were granted a decision, are receiving benefits and not appealing their benefit, (2) individuals who were granted a decision, are receiving benefits and are appealing for additional special benefits (*i.e.,* Aid and Attendance, Housebound), (3) individuals who were denied benefits and are appealing.

b. Education (EDU) Service Surveys

J.D. Power will be pilot testing two survey instruments for the Education (EDU) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Education into two categories—Enrollment in a Benefit and Servicing of a Benefit. There will be one survey instrument for the Enrollment category and one survey instrument for the Servicing category. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaire will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot Education Enrollment questionnaire will include individuals who have received a decision on their education benefit application within 90 days (*i.e.,* the original end-product has been cleared within the past 90 days) prior to the fielding period. The sample will be stratified as follows: (1) Accepted and enrolled, (2) accepted and not enrolled, (3) denied. The survey pool for the pilot Education Servicing questionnaire will include beneficiaries who have been enrolled and receiving education benefit payments for at least 2 consecutive school terms prior to the fielding period.

c. Loan Guaranty (LGY) Service Surveys

J.D. Power will be pilot testing two survey instruments for the Loan Guaranty (LGY) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Loan Guaranty into two categories—Home Loan Enrollment and Processing, and Specially Adapted Housing Servicing (Assessment and Grant Process). There will be one survey instrument for the Home Loan category, and one survey instrument for the Specially Adapted Housing category. The Home Loan Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. Additionally, the Home Loan questionnaire will address areas specific to the Loan Process. The Specially Adapted Housing Servicing questionnaire will include the same factors as Home Loan, but will address the grant process rather than the loan process. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot LGY Enrollment questionnaire will include individuals who closed a VA home loan in the 30 days prior to the fielding period. The sample will be stratified as follows: (1) Those who closed on purchase loans, (2) those who received loans for interest rate reductions, and (3) those who obtained cash out or other refinancing. The survey pool for the pilot SAH servicing questionnaire will include individuals who are eligible for a specially adapted housing grant in FY 2009. The sample will be stratified as follows: (1) Those who have not yet applied, (2) those who have applied but have not yet received a decision, (3) those who have received an approval on their grant and are currently somewhere in post-approval, (4) those who have had all their funds disbursed and final accounting is not yet complete, and (5) those who have had

all of their funds disbursed and final accounting is complete.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys

J.D. Power will be pilot testing three survey instruments for the Vocational Rehabilitation and Employment (VR&E) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Education into three categories—Enrollment in a Benefit, Servicing of a Benefit, and Escaped Beneficiaries. There will be one survey instrument for the Enrollment category, one survey instrument for the Servicing category, and one survey instrument for the Escaped Beneficiary category. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaire will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The Escaped Beneficiary questionnaire will include similar factors to Enrollment and Servicing; however, the questionnaire will address the experience that is unique to potential beneficiaries who applied for the benefit but decided not to pursue the benefit or services provided, including the reasons why they chose not to continue with the benefit application process or the VR&E program. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot VR&E Enrollment questionnaire will include individuals who had an initial meeting with their VR&E counselor and were granted a decision regarding their entitlement in the past 60 days prior to the fielding period. The sample will be stratified as follows: (1) Those who applied, showed up for an initial appointment, were found entitled to and decided to pursue the program, (2) those who applied, showed up for an initial appointment, were found entitled to and decided not to pursue the program, (3) those who applied, showed up for an initial appointment and were not found entitled to the program. The survey pool for the pilot VR&E Servicing questionnaire will include individuals who have entered and been enrolled in one of the five tracks for at least 60 days prior to the fielding period. The sample will be stratified as follows: (1) Veterans who are currently participating, (2) Veterans who have been rehabilitated, (3) Veterans who did not fully complete program (negative closures), and (4) Veterans who have reached maximum rehabilitation gain and could not proceed in program. The survey pool for the pilot VR&E Escaped Beneficiary questionnaire will include individuals who dropped out of the program prior to completing a rehabilitation plan. The sample will be stratified as follows: (1) Applicants who never attended the initial meeting with a counselor, (2) applicants who were determined to be entitled and did not complete a rehabilitation plan, and (3) applicants who started, but did not complete rehabilitation (*i.e.,* negative closures).

OMB Control Number: 2900—New (VOV).

Type of Review: New collection.

Abstract: In 2008, VBA recognized a need to develop and design an integrated, comprehensive Voice of the Veteran (VOV) measurement program for their lines of business. This continuous measurement program will help VBA understand what is important to Veterans relative to VBA services and will provide VA/VBA leadership with actionable and timely customer feedback on how VBA is performing against those metrics. Insights will help identify opportunities for improvement and measure the impact of improvement initiatives.

The program started with numerous interviews with stakeholders at various levels within the VBA organization and Veterans Service Organizations to identify information needs and perceived gaps in current processes. Surveys are designed to address those needs.

VBA has engaged J.D. Power and Associates to conduct this survey initiative. The questionnaires are drafted in accordance with the J.D. Power and Associates Index Model—the cornerstone of all proprietary and syndicated research studies conducted by J.D. Power. The model will allow J.D. Power to quantify, based on the survey data, what is most important and least important with regard to satisfying our nation's Veterans.

All survey instruments for each line of business, Compensation and Pension Service, Education Service, Vocational Rehabilitation and Employment Service, and Loan Guaranty Service, will contain common factors to allow VBA to compare scores across lines of business. In addition, JDPA will be in a position to provide VBA with an Overall Satisfaction score for their experience across all benefits provided by VBA.

Affected Public: Individuals and Households.

Estimated Annual Burden:

a. Compensation and Pension (C&P) Service Surveys—3,000 hours.

b. Education (EDU) Service Surveys—1,500 hours.

c. Loan Guaranty (LGY) Service Surveys—1,125 hours.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys—1,875 Hours

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. Compensation and Pension (C&P) Service Surveys—12,000.

b. Education (EDU) Service Surveys—6,000.

c. Loan Guaranty (LGY) Service Surveys—4,500.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys—7,500.

Dated: January 18, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–1273 Filed 1–21–11; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA–HQ–OAR–2006–0406, FRL–9253–7]

RIN 2060–AP16

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action promulgates amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is finalizing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this action. We are also denying reconsideration on one issue raised in a petition for reconsideration received by the Agency on the final rules.

DATES: These final rules are effective on January 24, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of January 24, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0406. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is: *http://wwwlepa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the Fax number is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT:

General and Technical Information: Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711, *telephone:* (919) 541–5397, *facsimile number:* (919) 685–3195, *e-mail address: shedd.steve@epa.gov.*

Compliance Information: Ms. Maria Malave, Office of Compliance, Air Compliance Branch (2223A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *telephone:* (202) 564–7027, *e-mail address: Malave.Maria@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS *	Examples of regulated entities
Industry	324110, 493190, 486910, 424710, 447110, 447190.	Operations at area sources that transfer and store gasoline, including bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.
Federal/State/local/Tribal governments.		

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Outline: The information presented in this preamble is organized as follows:

I. General Information
A. Where can I get a copy of this document?
B. Judicial Review
II. Background Information
A. Petitions for Reconsideration and Judicial Review
B. Other Stakeholder Issues
III. Summary of Changes Since Proposal
IV. Summary of Comments and Responses
A. Applicability
B. Throughput Thresholds
C. Rule Clarifications
D. Comments Addressing Other Provisions That Were Not Proposed To Be Amended
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of these final amendments will also be available on the Worldwide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN at EPA's Web site provides information

and technology exchange in various areas of air pollution control.

B. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 25, 2011. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information

On January 10, 2008 (73 FR 1916), EPA promulgated National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC) pursuant to sections 112(c)(3) and 112(d)(5) of the CAA. On March 10, 2008, the Administrator received two petitions for reconsideration of the final rules. One petition was filed by the Alliance of Automobile Manufacturers (Alliance) and the other by the American Petroleum Institute (API) (Docket No. EPA–HQ–OAR–2006–0406, items 0174 and 0173). The Alliance also filed a petition for judicial review of the final rules in the United States Court of Appeals for the District of Columbia Circuit. In addition, the Alliance, API, and several other stakeholders (affected facilities and State and local government agencies) contacted EPA with questions on issues related to the implementation of the final rules.

A. Petitions for Reconsideration and Judicial Review

1. The Alliance Petition

The Alliance's petition for reconsideration identified three issues for reconsideration (*see* the preamble to the proposed rule for a discussion of these issues (74 FR 66471)). The first two issues were regarding the definition of "Bulk Gasoline Plant." We granted reconsideration of these two issues in the proposed rule (74 FR 66471). We are taking final action with regard to those issues in today's notice.

The Alliance raised a third issue in its petition for reconsideration, which questioned the inclusion of gasoline storage tanks used to fuel emergency generators and fire pumps as being subject to 40 CFR part 63, subpart BBBBBB or 40 CFR part 63, subpart CCCCCC. The Alliance stated in both its petition for reconsideration and in its comments submitted on the proposed amendments that gasoline storage tanks that fuel fire pumps and emergency generators should not be covered by subparts BBBBBB or CCCCCC. They stated that many of these pieces of equipment are fueled by gasoline storage tanks holding less than 250 gallons. The Alliance acknowledged that other gasoline storage tanks fueling this equipment are above this 250-gallon level, but it asserts that the gasoline storage tanks still have very low monthly throughput. The Alliance also stated that most emergency generator and fire pump gasoline storage tanks will have zero gallons per day throughput and are likely to be filled only once or twice per year after routine maintenance and testing. The Alliance further stated that regulating this equipment under subparts BBBBBB or CCCCCC could potentially cover thousands of emergency generator and fire pump gasoline storage tanks nationwide at various types of facilities that may not otherwise have air permitting requirements. Thus, in its petition for reconsideration, the Alliance suggested that EPA entirely exempt these gasoline storage tanks from regulation under either subpart BBBBBB or subpart CCCCCC.

After considering this matter, we deny reconsideration of the third issue in the Alliance's petition for reconsideration. Under CAA section 307(b)(7)(B), the Administrator must initiate reconsideration proceedings with respect to provisions that are of central relevance to the rule at issue if the petitioner shows that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period but within the period for filing petitions for judicial review. The Alliance attempted neither demonstration in its petition for reconsideration; instead, it merely asserted that "neither the proposal nor the final rule provided any notice" that these tanks could be subject to the rules (*see* Docket No. EPA–HQ–OAR–2006–0406, item 0152.1). Such assertion is not sufficient under CAA section 307(d)(7)(B) for requiring EPA to reconsider this issue. The provision that the Alliance alleges provoked this third issue, the originally promulgated definition of "bulk gasoline plant," was included in the original proposal published on November 9, 2006 (*see* 40 CFR 63.11100, 73 FR 1916, 1940). The Alliance had ample time during the 60-day public comment period to raise its concern that this definition of "bulk gasoline plant" "could be read to cover gasoline storage tanks that fuel emergency generators and fire pumps." (*See* Docket No. EPA–HQ–OAR–2006–0406, item 0152.1.) However, the Alliance did not raise this concern in its January 8, 2007 comments that it submitted on that proposal (*see* Docket No. EPA–HQ–OAR–2006–0406, item 0094.1) and has not provided any other explanation in its petition for reconsideration regarding why doing so was "impracticable." Additionally, the Alliance has not provided any argument regarding why its concern "arose after the public comment period but within the period for filing petitions for judicial review." Finally, the Alliance has offered no explanation as to why its particular issue with this particular provision is of "central relevance to the rule." Since the Alliance has not demonstrated how its request meets the requirements of CAA section 307(d)(7)(B), EPA is denying reconsideration of this issue in its petition for reconsideration.[1]

Furthermore, we disagree with the Alliance that gasoline storage tanks that

[1] While EPA did grant reconsideration on the Alliance's other issues in its petition for reconsideration which also involved the definition of "bulk gasoline plant", EPA did so for completely independent reasons unrelated to this third issue. *See* 74 FR 66470, 66471.

fuel emergency generators and fire pumps should not be regulated as part of the Gasoline Distribution area source category. This alleged issue is essentially just a request from the Alliance that EPA exempt from regulation gasoline storage tanks fueling emergency generators and fuel pumps. However, as we stated in the preamble to the proposed amendments (74 FR 66474), the CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3). The list of source categories was developed based on an emission inventory. The emission inventory for GDF is based on the total volume of gasoline consumed nationwide (including domestic production, plus imports and stock changes from the previous year, minus exports), the emission factor for gasoline loading losses, and the amount of submerged and splash loading and vapor balancing in the industry. Total gasoline consumption is the total used nationwide, so the emission inventory includes emissions estimates for all end users of gasoline, which includes gasoline used in these emergency generators and fire pumps. *See* 74 FR 66470, 66474. Additionally, the types of gasoline storage tanks identified by the Alliance are essentially the same as those found at other GDF, except that the average or typical size and gasoline throughput tend to be smaller than for the gasoline storage tanks at a more typical GDF that refuel primarily motor vehicles. We considered both the size and throughput of gasoline storage tanks at GDF in the selection of the control requirements in the current rule, so the types of controls, and the control levels required, are appropriate for even the smallest gasoline storage tanks.

2. The API Petition

The API Petition for Reconsideration identified four issues regarding clarifications that they suggested should be made to the final rules. We granted reconsideration of all four issues and addressed them in the preamble and the rule text revisions that were included in the proposed amendments. Additional discussion of the final amendments to the rules as a result of our reconsideration of the issues in the API petition, and our rationale for the amendments, is presented in section IV of this preamble.

B. Other Stakeholder Issues

In addition to the petitions discussed above, the Alliance, API, and several other stakeholders (affected facilities and State and local government agencies) contacted EPA with questions or issues related to the implementation of the final rules. We are finalizing the proposed changes to the rules resulting from these issues as described in section IV of this preamble.

The amendments being promulgated address both the petitions for reconsideration and the additional questions from other stakeholders. Our responses to the stakeholder questions do not substantially change the level of the standards but clarify some of the requirements. These clarifications do not change the impacts of the rules. Thus, the estimates of environmental, cost, and information collection impacts are not substantially different than estimated at promulgation of these rules, and no changes have been made to the estimates presented in the final rules.

III. Summary of Changes Since Proposal

This section presents a brief summary of the significant changes that have been made in the final rule as a result of our consideration of the public comments on the proposed rule. Each of the items listed below is discussed in detail in section IV of this preamble.

1. In the final rule, we have added a provision to paragraph (g) in 40 CFR 63.11081 clarifying that "An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gallons per day design capacity throughput threshold, to determine whether the facility is a bulk gasoline plant or a bulk terminal."

2. In the final rule, we have clarified in 40 CFR 63.11092(b)(1)(iii)(B)(*1*), that the purpose of a heat sensing device used to monitor a thermal oxidizer is to "send," rather than to "display" (as stated in the proposal), either a positive or a negative parameter value as a signal to indicate the presence or absence, respectively, of the pilot flame. We also clarified that the analyzer for conducting monthly measurements of the carbon outlet volatile organic compound (VOC) concentration (from a carbon bed) can be permanently mounted (*i.e.,* it need not be portable as was previously stated in the rule at 40 CFR 63.11092(b)(1)(i)(B)(1)(iii)).

3. We have added text to 40 CFR 63.11092(f) specifying that facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with the annual certification test for gasoline cargo tanks as specified in paragraphs (f)(1) and (f)(2) of this section.

4. We have revised the proposed amendments to entry 2 of Table 1 to 40 CFR part 63, subpart BBBBBB, to correctly specify that the secondary seal requirements from 40 CFR part 60, subpart Kb (40 CFR 60.112b(a)(1)(ii)(B) and (a)(1)(iv) through (ix)) or 40 CFR part 63, subpart WW (40 CFR 63.1063(a)(1)(i)(C) and (D)) do not apply to internal floating roof tanks that are subject only to subpart BBBBBB.

5. In 40 CFR part 63, subpart BBBBBB, the following revisions have been made to the definitions in 40 CFR 63.11100:

- We have revised the proposed definition of "gasoline storage tank" to add an item (3) that specifically excludes sumps, including butane blending sample recovery tanks (SRT), and oil/water separators, from the definition of gasoline storage tank.
- We have also added a fourth item in the definition of "gasoline storage tank" excluding "tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships."
- We have amended the definition of "pipeline pumping station" to read: "a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing gasoline storage tanks other than surge control tanks."

6. We have added a new paragraph (f) to 40 CFR 63.11113 of 40 CFR part 63, subpart CCCCCC, stating that the compliance date for existing GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, is January 24, 2014. Also, we have added text to paragraph (e) of 40 CFR 63.11111 in the final rule stating that the date of the start of recordkeeping for these existing GDF is the date of publication of these final amendments. For new sources constructed, or for existing sources reconstructed, after the date of publication of these final amendments, recordkeeping must begin upon startup of the affected facility.

7. We have revised 40 CFR 63.11120 to include a new paragraph (d) that adds a cross-reference to the vapor tightness testing requirements found in 40 CFR 63.11092(f). The vapor tightness testing was not previously listed in 40 CFR 63.11120.

8. We have added rule text in 40 CFR 63.11124(a)(1) stating that GDF that are now subject to the rule because they only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, must submit Initial Notifications within 120 days of publication of these final amendments.

9. We have revised 40 CFR 63.11124(a)(2) and (b)(2) to include a requirement that facilities must state in their Notification of Compliance Status (NOCS) report whether the facilities' gasoline throughput is determined based on the volume of gasoline loaded into all gasoline storage tanks, or on the volume of gasoline dispensed from all gasoline storage tanks. We have also specifically included the 60-day time frame for the submittal of the NOCS in 40 CFR 63.11124(a)(2).

10. We have corrected a typographical error in proposed 40 CFR 63.11125(c). The citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appeared in the reconsideration proposal.

11. In 40 CFR part 63, subpart CCCCCC, we have added the CAA definition of motor vehicles to the definitions found in 40 CFR 63.11132.

IV. Summary of Comments and Responses

Amendments to the gasoline distribution area source rules were proposed on December 15, 2009 (74 FR 66470). The 60-day public comment period ended on February 16, 2010, and we received 17 comment letters. Comments were received from industry representatives, trade associations, State and local air pollution control agencies, and private citizens. The final rule amendments reflect our consideration of the significant comments received on the proposed action. This section presents a summary of the significant comments received and our responses to those comments.

A. Applicability

1. Definition of Bulk Gasoline Plant

We proposed revising the definition of "bulk gasoline plant" in subpart BBBBBB to clarify that gasoline from these facilities is subsequently loaded into gasoline cargo tanks for transport to GDF. The proposed definition is as follows: "Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person."

We received no comments specifically addressing the proposed revision to the definition of "bulk gasoline plants" and are finalizing the definition as proposed.

2. Definition of Gasoline Dispensing Facility

We proposed amending the definition of "gasoline dispensing facility" in 40 CFR part 63, subpart CCCCCC to clarify our intent to include all stationary facilities that dispense gasoline into the fuel tanks of all end users of gasoline. The proposed definition is: "Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment."

Comment: One commenter recommends that, if EPA finalizes the proposed definition of GDF, EPA extend the compliance date for facilities that may now become affected facilities under 40 CFR part 63, subpart CCCCCC. The commenter suggested that since EPA will likely not issue the final amendments until just prior to the January 10, 2011, compliance date, many affected sources may be unaware that they are subject to subpart CCCCCC. The commenter requests that EPA consider extending the compliance date for GDF that exceed the 10,000 gallons per month (gpm) throughput level purely because they dispense gasoline to end users other than motor vehicles. The commenter asserted that these facilities may not be able to install the necessary control equipment prior to the January 10, 2011, deadline, and should be provided additional time to comply with the submerged fill requirements.

The commenter stated that the proposed new definition of GDF greatly expands the affected source category beyond the "fuel tank of a motor vehicle" category in the current rule. The commenter stated that while many of the additional affected sources may fall under the 10,000 gpm throughput level, these facilities would still become affected facilities under the national emission standards for hazardous air pollutants (NESHAP). The commenter stated that State agencies accepting delegation of these NESHAP must be able to sufficiently implement and enforce the standards for all affected facilities, not just facilities required to control emissions. The commenter noted that, in addition to applying good management practices, small GDF must also be able to produce records to prove the facility is under 10,000 gpm throughput. The commenter asserted that it is not reasonable to believe that the majority of these small GDF will keep these gasoline throughput records, nor that EPA or the delegated State agencies will be able to assure compliance with the recordkeeping requirements. Further, the commenter suggested that some facilities may exceed the 10,000 gpm throughput threshold levels when considering fueling nonroad vehicles or nonroad engines.

A second commenter stated many of the same concerns as the previous commenter and also stated that, without any objective research, the Agency concluded that the newly-affected sources would all have throughputs less than 10,000 gpm and therefore be subject to only 40 CFR 63.11116. The commenter stated that some of their facilities would not fit into this presumed scenario; as a result, they would be given only a few months to install submerged fill pipes on all its storage tanks.

The commenter also stated that EPA ignores the coincident impacts of a source being regulated under the NESHAP. For example, the commenter stated that they are covered by a New Jersey Department of Environmental Protection (NJDEP) General Air Permit. The commenter explained that the NJDEP General Air Permit excludes coverage for any source that is covered under 40 CFR part 63. As a result, the commenter said that they will have to apply for, pay the fees for, and obtain an individual permit. The commenter asserted that this will also work against the NJDEP's focus on General Air Permits, which ensures environmental protection while freeing staff resources for more worthwhile tasks. The commenter stated that the rule should be revised to read as follows:

"(c) If you have an existing affected source that becomes subject to the control requirements in this subpart after January 10, 2008, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart."

Response: We continue to believe that the preamble to the January 10, 2008, final rule was clear that, as discussed in the proposal, all facilities that dispense gasoline, both public and private, were subject to the rule. However, we acknowledged that our intent may have been misinterpreted by some readers

because the January 10, 2008, final rule definition of GDF only referenced the dispensing of gasoline into the fuel tank of a "motor vehicle." CAA section 216(2) defines the term motor vehicle as "any self-propelled vehicle designed for transporting persons or property on a street or highway." The combination of these two definitions results in a definition of GDF that is more limited than what we intended when promulgating the final rule. Thus, we agree with the commenters that some facilities that are subject to 40 CFR part 63, subpart CCCCCC because they dispense gasoline to end users other than those defined in the January 10, 2008, final rule, or specifically defined in the CAA as motor vehicles, may not have considered themselves subject to the rule prior to the clarification of the definition of GDF. This segment of the GDF population includes those that dispense gasoline into the fuel tank of a nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. It would also include facilities dispensing gasoline into lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

We recognize that the source category was more narrowly defined in the final rule than we intended, so we are finalizing the proposed amendments to the definition of "gasoline dispensing facility" to correctly define the source category. Because the sources described above were only clearly informed that 40 CFR part 63, subpart CCCCCC was applicable to them as of the December 15, 2009, proposal date, we agree that these newly covered sources should be allowed additional time in which to comply with the revised final rule.

In the final rule, we have added the CAA definition of "motor vehicles" in 40 CFR 63.11132, and have also added a new paragraph (f) to 40 CFR 63.11113 indicating the compliance dates for new and existing GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. For existing GDF that are subject to the control requirements in this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, the compliance date is January 24, 2014. For new or reconstructed GDF that are subject to the control requirements in this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, the compliance date is either the date of publication of these final rules or the date of startup of the affected GDF (*see* 40 CFR 63.11132(f)(2)), whichever is later.

Comment: One commenter suggested that, to clarify that a single site may contain multiple GDF, the following sentence be added at the end of the proposed definition of GDF: "Each separate gasoline dispensing activity and associated gasoline storage tank or tanks shall be considered an individual GDF for the purposes of this rule."

Response: Section 63.11111(h) of 40 CFR part 63, subpart CCCCCC, as proposed, included the following sentence: "If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source." We believe that this statement is appropriate to resolve the commenter's concern, that it is more specific, and that it is more appropriate in the applicability section rather than in the definition of a GDF. We are, therefore, not incorporating this change into the definition of GDF as requested by the commenter.

3. Tanks With Infrequent Use

We proposed to amend item 1 of Table 1 of 40 CFR part 63, subpart BBBBBB by adding a subcategory that specifies the control requirements for tanks that have a capacity of less than 151 cubic meters and a throughput of less than 480 gallons per day (gpd). We did not receive comments on this proposed amendment and have included it in the final rule.

4. Surge Control Tanks

We proposed to add a definition of "surge control tanks" and to amend Table 1 of 40 CFR part 63, subpart BBBBBB by adding an entry 3 that specifies control requirements for these tanks. We did not receive comments on this proposed amendment and have included it in the final rule.

5. Definition of Gasoline Storage Tank

We proposed to amend 40 CFR part 63, subpart BBBBBB to include the following definition of "gasoline storage tank": "Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include: (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or (2) subsurface caverns or porous rock reservoirs." This definition is based on the definition of "storage vessel" found in 40 CFR part 60, subpart Kb without the exemption for "process tank."

Comment: Commenters object to the proposed definition of "gasoline storage tank" and believe that it has potentially unintended implications. The commenters provided extensive comments in support of their position that the definition of "gasoline storage tank" should be exactly the same as is found in 40 CFR part 60, subpart Kb, *i.e.,* that the definition should specifically exclude process tanks. The commenters stated that subpart Kb and other EPA regulations have distinguished between vessels that serve a storage function and vessels that serve a process function. The commenters stated that, by removing the process tank exclusion, the rule may inadvertently bring underground sumps and oil/water separators into the rule. The commenters further stated that these vessels are not "storage" tanks. The commenters explained that sumps that collect drained material such that it can be pumped to storage or otherwise re-injected into the system, serve a process rather than a storage function. The commenters stated that a typical sump has a capacity of approximately 1,200 gallons, and is used to collect liquid from thermal relief valves, sample collection activities, and maintenance activities. The commenters further stated that most sumps are equipped with a pump that starts automatically as liquids accumulate, and that the liquids are either pumped back into the pipeline or to a larger transmix tank and are not stored long-term in the sump. The commenters stated that there is no way to install floating roofs on these vessels, and installation of a pressure/vacuum (p/v) vent on these vessels could result in back pressure in the system which could cause vapors to go back into the loading system. The commenter also stated that one particular type of sump, a butane SRT, should not be considered a storage tank. The commenter explained that, for terminals with butane blending, a SRT is part of the apparatus required by the applicable American Society for Testing and Materials (ASTM) test method for the routine automatic product sampling performed for the butane blending process. The commenter stated that these small tanks (250- or 500-gallons capacity) collect used samples of gasoline. The commenter also stated that a floating roof would not be feasible in such small tanks, and closing the tank with a pressure vent would interfere with the ASTM test method for which the tank is installed. The commenter further stated that the ASTM test method requires the analysis to be performed at atmospheric pressure, and, thus, the SRT is equipped with an open vent in order to prevent back pressure

in the analyzer. The commenter concluded by saying that a SRT is not used for gasoline "storage," but rather, it collects material, for sampling purposes, within the butane blending process before the material is automatically transferred back into the system.

One commenter also provided supporting data regarding the cost and emission reduction potential of installing p/v vents on sumps and underground vessels. The commenter stated that the cost of installing a p/v vent on an average sized sump would be approximately $15,000, the hazardous air pollutant (HAP) reductions would only be about 6 pounds per year, and the cost-effectiveness, even if the p/v vent eliminated breathing losses entirely, would be over $1 million per ton of HAP controlled.

The commenters requested that, if EPA will not maintain the process tank exemption, EPA add an exclusion under the "gasoline storage tank" definition for sumps, including butane blending SRT, and oil/water separators. The commenters also stated that if EPA will not return the process tank exclusion to the "gasoline storage tank" definition, EPA should specify a separate compliance period for process tanks (such as flow-through sumps that accumulate gasoline) and allow 3 years from the date of publication of the final amendments.

Response: Prior to receiving these comments, we were not aware of the issue related to sumps, including butane blending SRT, and oil/water separators. After reviewing these comments, we agree that these particular types of tanks should not be considered "gasoline storage tanks" for the purposes of these rules. Based on the information provided by the commenters, we concluded that these types of tanks are not "gasoline storage tanks" and not part of the gasoline distribution source category because the liquids that are collected and stored in them do not meet the definition of "gasoline." In addition, information provided by the commenters indicates that emissions from these types of tanks are low because they are located underground and it is not cost-effective to enclose and control emissions by installing p/v vent valves. We agree that sumps, including butane blending SRT, and oil/water separators are likely not cost-effective to control based on the information provided by the commenters. In the final rule, we have revised the definition of "gasoline storage tank" to add an item (3) that specifically excludes sumps, including butane blending SRT, and oil/water separators from the definition of "gasoline storage tank." Since we have excluded these tanks from the definition of "gasoline storage tank," they are not subject to control requirements under these rules.

As provided for under these rules, whether any other types of tanks used at bulk facilities or GDF are subject to the requirements of these rules depends on whether those tanks meet the definition of "gasoline storage tank" in the rules (*see* 40 CFR 63.11100 of subpart BBBBBB and 63.11132 of subpart CCCCCC). For the gasoline distribution area source category, the distinction between a "process tank" and any other type of tank is not relevant for deciding whether the rules are applicable. Instead, if a tank used at a bulk facility or a GDF meets the definition of "gasoline storage tank," it will be subject to the applicable requirements in the rule. If that tank does not qualify as a "gasoline storage tank," it will not be regulated under these rules. Stakeholders that have questions about the applicability of these rules to particular tanks at their facilities may seek assistance from the applicable EPA Regional Office or the delegated State or local authorities (*see* 40 CFR 63.11099 and 63.11131, as applicable). Additionally, EPA will consider providing specific exclusions for specific tanks in the "gasoline storage tank" definition as is being done today if such action seems appropriate.

Comment: The commenters also stated that the proposed definition of "gasoline storage tank" fails to distinguish between gasoline storage tanks located at the terminal and the tank trucks that are loaded at the terminal. They pointed out that 40 CFR part 60, subpart Kb makes this distinction by exempting "Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships." The commenters stated that a similar clarification should be made in 40 CFR part 63, subpart BBBBBB.

Response: We considered the commenter's position and agree that mobile tanks such as tank trucks that are loaded at the terminal were not intended to be included in the "gasoline storage tank" definition as proposed. Such mobile tanks serve a different purpose than stationary gasoline storage tanks, and the applicable emission control technologies are also different. We did not anticipate that there would be any confusion caused by the lack of a specific exclusion for mobile tanks from the definition of gasoline storage tanks. We are, however, adding a fourth item in the definition of "gasoline storage tank" excluding "tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships."

Comment: Commenters stated that an unintended consequence of the "gasoline storage tank" definition, as proposed, is that it could be misconstrued in a manner that would result in pipeline pumping stations being deemed pipeline breakout stations. The commenters stated that if a surge control tank or an underground sump at a pipeline pumping station were construed as being a storage vessel, then this facility would be rendered a pipeline breakout station under the present definition of a pipeline pumping station. They pointed out that in the preamble for the final rule, EPA concluded that it is not necessary for pipeline pumping stations to submit semi-annual reports for periods in which no deviation occurred. The commenters further stated that pipeline breakout stations, however, must submit semi-annual reports regardless of whether any deviations occurred. The commenters stated that misclassification of pipeline pumping stations as pipeline breakout stations would impose a significant burden on these facilities to submit reports that EPA has already concluded are unnecessary. The commenters request that the rule be clarified to avoid a misclassification of pipeline pumping stations as pipeline breakout stations.

Response: We agree with the commenters that the definition of "pipeline pumping stations" needs to be clarified. It is not our intent that the presence of surge control tanks or sump tanks result in a pipeline pumping station being required to submit semi-annual reports for periods in which no deviation occurs, as required for a pipeline breakout station. However, as discussed earlier, we have excluded sump tanks from the definition of a "gasoline storage tank," so that is not an issue with the definition of "pipeline pumping station."

Additionally, as stated earlier, we did not receive adverse comments on our proposed control requirements for surge control tanks in Table 1 of 40 CFR part 63, subpart BBBBBB by adding an entry 3 (not item 2, as the commenter stated) that applies to pipeline breakout stations and pipeline pumping stations (*see* title of § 63.11087). Thus, we are amending the definition of "pipeline pumping station" in this final rule to mean "a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing gasoline storage tanks other than surge control tanks."

6. Aviation Gasoline at Airports and Marine Tank Vessel Loading at Bulk Facilities

We proposed to specifically exclude the loading of aviation gasoline into storage tanks at airports and the loading of gasoline into marine tank vessels at bulk facilities from 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC. We did not receive comments on this proposed exclusion and have included it in the final rules.

7. Temporary/Contractor Tanks

We did not propose changes to the rule to address a question of how 40 CFR part 63, subpart CCCCCC applies to temporary or contractor gasoline storage tanks. We asked for comment on the following rationale for not making any changes: "It appears it is the responsibility of the owner or operator of the affected facility to ensure that all emission sources at the facility comply with the requirements of any applicable standards. It seems owners or operators could consider this responsibility when negotiating contracts with third parties and address it in the contracts for the specific work being done. Thus, the requirements in the General Provisions will likely adequately address the stakeholder's concern."

Comment: One commenter expressed concern with the approach EPA has taken regarding temporary/contractor gasoline storage tanks. The commenter's concern is that the approach could create very burdensome paperwork demands for temporary gasoline storage tanks due to the initial notifications and other potential requirements, such as recordkeeping and compliance certifications, under 40 CFR part 63, subpart CCCCCC. The commenter also asked whether a facility would be required to submit a notification to EPA when the temporary gasoline storage tank is removed from the facility. The commenter suggested that EPA clarify that any applicable recordkeeping requirements for temporary or contractor gasoline storage tanks be terminated when the gasoline storage tank is removed from the site.

Response: We have not made any changes in the final rule as a result of these comments. A gasoline storage tank temporarily located at a facility should be treated the same as any other gasoline storage tank at the facility in that routine notifications to the delegated permitting agency would be needed when the gasoline storage tank becomes subject to the standard or is removed from the facility. We do not consider these notifications to be overly burdensome, especially considering that only gasoline storage tanks with gasoline throughput of 10,000 gallons or more per month would be required to submit them. Also, as with any other emission source at a facility, once the temporary or contractor gasoline storage tank is removed from the facility, the owner's or operator's obligation to keep records regarding that gasoline storage tank would also end. The commenter did not address directly our proposed position that the owner or operator of a facility is ultimately responsible for ensuring that all emission sources at the facility comply with the requirements of any applicable standards. Nor did any other commenters submit comments opposed to our stated position.

8. Coverage of Tanks Used To Fuel Vehicles and To Fill Cargo Tanks for On-Site Fuel Redistribution

We proposed adding text to each subpart to clarify how the two subparts would be applied to gasoline storage tanks that are used to fuel vehicles, but that may also be used to dispense gasoline into portable tanks or cargo tanks, as follows:

- Add a paragraph (h) to 40 CFR 63.11081 of subpart BBBBBB to read as follows: "Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart."
- Add a paragraph (j) to 40 CFR 63.11111 of subpart CCCCCC to read as follows: "The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is subject to § 63.11116 of this subpart."

Comment: One commenter noted that the proposed definition of GDF requires that the facility be stationary. The commenter stated that the paragraph (j) added to 40 CFR 63.11111 of subpart CCCCCC, however, contradicts this definition and appears to impose requirements on portable gasoline tanks used for subsequent dispensing. The commenter asked that EPA clarify that portable gasoline tanks are not subject to the requirements in 40 CFR 63.11116 based on the proposed language in 40 CFR 63.11111(j). The commenter stated that the requirements should only apply to the gasoline dispensing from the fixed gasoline storage tank at the GDF.

Response: While we agree with the commenter that a GDF is a stationary source, there are certain steps that take place at the GDF that involve mobile equipment. For example, the off-loading of gasoline from the gasoline cargo tank into the GDF's fixed storage tanks is subject to requirements under subpart CCCCCC. In the final rule we are requiring that the management practices required under 40 CFR 63.11116 must be met during all steps in the gasoline distribution process. In other words, the intermediate operations (*see* 40 CFR 63.11111(j)) of loading a portable gasoline tank at a GDF, delivering the gasoline via the portable gasoline tank, and dispensing the gasoline from the portable gasoline tank into gasoline-fueled engines or pieces of equipment (the end-use fuel tank) at the GDF, are all part of the gasoline distribution process. These intermediate operations are subject to the 40 CFR 63.11116 management practices (minimize spills and evaporation). There are no notifications or reporting required under 40 CFR 63.11116; thus, the only requirement applicable to these intermediate operations is to utilize the management practices.

Comment: One commenter requested that EPA clarify that gasoline loaded into portable gasoline tanks does not need to be included in the monthly throughput calculation, assuming you are calculating the monthly throughput by considering the gasoline loaded into (rather than dispensed from) all fixed gasoline storage tanks at the GDF. The commenter explained that, with this clarification, monthly throughput calculated using the gasoline loaded into the fixed gasoline storage tank and the portable gasoline storage tank would not be double-counted.

Response: As discussed in the proposal preamble (74 FR 66478), monthly gasoline throughput may be measured as either the volume of gasoline going into the gasoline storage tanks at a GDF or, alternatively, the volume of gasoline coming out of the gasoline storage tanks. In most instances, we expect that measurement of the volume of gasoline going into the gasoline storage tanks is most appropriate because gasoline storage tank loadings tend to be done much less often, and involve much greater quantities at one time, whereas the dispensing of the gasoline usually occurs in frequent, but low volumes. The commenter is correct that gasoline loaded into portable gasoline tanks does not need to be included in the monthly throughput calculation if you are calculating the monthly throughput by considering the gasoline loaded into (rather than dispensed from) all fixed gasoline storage tanks at the GDF. However, in cases where a facility is measuring throughput based on the volume pumped out of the GDF, the

loading of a portable tank from the GDF's fixed gasoline storage tank would count as throughput, but the subsequent off-loading from the portable tank would not. Regardless of which measurement alternative a facility chooses to use, however, the gasoline throughput to be used in determining the applicable control requirements for any GDF is the volume measured for the fixed gasoline storage tanks at the entire GDF.

Comment: One commenter stated that new paragraph (j) of 40 CFR 63.11111 requires additional explanation. The commenter stated that it is unclear what requirements apply to a fixed gasoline storage tank that dispenses gasoline into both portable gasoline tanks (for further distribution at the area source) and directly into the fuel tanks of the end users of gasoline such that it has a total monthly throughput that equals or exceeds 10,000 gallons. The commenter asked: "[I]f the transfer to a portable source is only subject to 40 CFR 63.11116, is the transfer to fuel tanks of end users based upon the monthly throughput to those end users or to the entire throughput from the GDF?"

Response: As explained in the previous response, monthly throughput is determined either by accounting for all gasoline going into or coming out of the fixed gasoline storage tanks at the GDF. The monthly throughput for the fixed gasoline storage tanks at a GDF determines the applicable control requirements for those fixed gasoline storage tanks. For GDF that choose to measure monthly throughput based on the total amount of gasoline dispensed from the fixed gasoline storage tanks at the GDF, it does not matter whether the gasoline is pumped into portable tanks or into the fuel tanks of the end users of the gasoline. The amount dispensed in both situations would be included in calculating the monthly throughout for that GDF. In the commenter's example, if a fixed gasoline storage tank dispenses gasoline into both portable gasoline tanks (for further distribution at the area source) and directly into the fuel tanks of the end users of gasoline, such that the GDF has a total monthly throughput that equals or exceeds 10,000 gallons, the fixed gasoline storage tank would be subject to either the submerged fill requirements of 40 CFR 63.11117 or the vapor balance requirements of 40 CFR 63.11118, depending on the total monthly throughput of the GDF.

As a result of questions by this and other commenters regarding the applicability of standards to the loading of portable gasoline tanks, we have clarified the proposed text of 40 CFR 63.11111(j) to state clearly that the only standards applicable to the portable gasoline tanks involved in the gasoline redistribution operations at the area source are the management practices in 40 CFR 63.11116.

Comment: One commenter does not agree with the proposed revision to 40 CFR 63.11081(h) for facilities that primarily operate as GDF, but infrequently may need to redistribute small amounts of gasoline between different gasoline storage tanks located within the same site. The commenter stated that GDF that incidentally and infrequently redistribute gasoline on-site should only be regulated as GDF under 40 CFR part 63, subpart CCCCCC.

Response: Our intent for proposing the revision to 40 CFR 63.11081(h) was to ensure that facilities that use a larger central gasoline storage tank to act as a feeder tank for smaller gasoline storage tanks that are located on the same site were subject to the standards for bulk gasoline plants. We specified in the new paragraph 40 CFR 63.11081(h) that the provision applied to gasoline storage tanks that load gasoline into a cargo tank. To minimize emissions, the loading of a gasoline cargo tank should only be performed using submerged filling. Thus, we disagree with the commenter that a facility that loads gasoline into a cargo tank for redistribution on-site should be regulated as a GDF, even if such an operation only occurs infrequently. Also, the commenter did not explain why such activities occur, how frequently they occur, what type of vessel is used for the redistribution, or what volumes of gasoline are typical of these activities. We continue to believe that the addition of new paragraph 40 CFR 63.11081(h) provides more clarity to the rules. However, we acknowledge that it is possible that no matter how the final rules are worded, there may be situations where the applicability of the rules will need to be resolved on a case-by-case basis with the delegated permitting authority.

9. Applicability to Sources That Are Subject to and Complying With 40 CFR Part 63, Subpart VVVVVV

We proposed amending 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC to specify that, if an affected source under either of these subparts is also subject to another Federal rule like 40 CFR part 63, subpart VVVVVV, the owner or operator may elect to comply only with the more stringent provisions of the applicable subparts.

Comment: One commenter stated that gasoline used as a feedstock at a chemical manufacturing facility is appropriately regulated under 40 CFR part 63, subpart VVVVVV, and should be exempted from 40 CFR part 63, subpart BBBBBB, and from 40 CFR part 63, subpart CCCCCC. The commenter stated that, by requiring facilities to make a case-by-case comparison of each condition in different Federal standards, the proposed amendments will only serve to make the regulations more difficult for affected facilities to comply with, and for State agencies to implement and enforce.

Another commenter stated that it is its understanding that a given NESHAP is a set of requirements that work in unison to create a system to ensure sources are properly identified, controlled, and monitored to ensure sufficient environmental protections. The commenter stated that the system will fail to be cohesive when individual components of separate NESHAP are combined. The commenter claims that this approach is haphazard and dissociative. The commenter believes that this case-by-case comparison method of addressing duplicative emission standards is without precedent, serves only to create confusion, and is almost guaranteed to lead to conflict over which part of different rules are the most stringent. The commenter claims that this is a unique approach to duplicative rules. The commenter stated that, under the maximum achievable control technology standards (MACT) rules, a source is explicitly exempt from duplicate standards if the source is already covered. The commenter further stated that the same should be applied to the area source NESHAP. The commenter requested that EPA specify the hierarchy of NESHAP applicability for a given classification of sources so that one, and only one, NESHAP standard applies to a source or process within a source.

Response: We disagree with the commenter's assertions regarding the proposed provisions. Each source has an obligation to comply with all applicable Federal requirements. However, to the extent that a source is subject to multiple requirements, that source may elect, under either 40 CFR 63.11081(i) or 40 CFR 63.11111(k), to comply only with the more stringent provisions in the applicable subparts. These elective provisions do not relieve a source of its legal obligation to be in compliance with all applicable requirements, but the provisions do allow a facility to identify and comply with only one set of requirements (*i.e.,* the most stringent requirements in the overlapping rules). The provisions themselves are optional; those facilities that find them too

complex or burdensome may choose not to use them and instead comply with all applicable subparts. Therefore, we are finalizing 40 CFR 63.11081(i) of subpart BBBBBB, and 40 CFR 63.11111(i) of subpart CCCCCC, as proposed.

B. Throughput Thresholds

1. Once Over a Throughput Threshold

We proposed adding provisions to 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC, clarifying our intent that once an affected source's throughput exceeds an applicable throughput threshold in either subpart, the affected source will remain subject to the requirements for sources above the threshold, even if the affected source's throughput later falls below the applicable throughput threshold.

Comment: One commenter stated that, based on EPA's current definition for "bulk gasoline terminal," gasoline throughput may be limited by compliance with an enforceable condition under State law. The commenter further stated that many existing bulk gasoline plants have actual throughputs far below the 20,000 gpd threshold, but may not have taken a permit limit or other enforceable condition prior to January 10, 2008, to limit throughput. The commenter noted that State agencies should have the discretion, prior to the January 10, 2011, compliance date, to issue permits or regulations limiting the throughput of affected sources that can demonstrate that actual throughput never exceeded 20,000 gpd. The commenter stated that this is consistent with what EPA has allowed for other NESHAP. The commenter recommends that EPA modify proposed paragraph 40 CFR 63.11081(f) by adding the italicized text, as follows: (f) If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of "bulk gasoline terminal," or in item 1 in Table 2 to this subpart *on or after the applicable compliance date,* the affected source will remain subject to the requirements for sources above the threshold, even if the affected source throughput later falls below the applicable throughput threshold.

Response: We considered the commenter's recommendation and agree that it is reasonable to allow bulk gasoline distribution facilities to establish enforceable permit limitations on throughput prior to the applicable compliance date. Such throughput limitations would allow a facility whose design capacity is above the 20,000 gpd bulk terminal threshold, but whose actual throughput is always below the threshold, to be subject to the bulk gasoline plant standards rather than the bulk gasoline terminal standards. In the final rule, we have added a provision to paragraph (g) in 40 CFR 63.11081 clarifying that "An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gpd design capacity throughput threshold to determine whether the facility is a bulk gasoline plant or a bulk gasoline terminal."

Comment: Commenters do not support the "once in/always in" (OIAI) provisions. The commenters disagree that the ongoing compliance costs for a GDF with a monthly throughput that exceeds, and subsequently falls below, 100,000 gallons, are "minor components of the total cost of control." Commenters stated that the rules would require that sources continue to comply with the vapor balance testing and reporting requirements, and subsequently the associated maintenance and recordkeeping, rather than just the submerged fill and work practice standards set forth in 40 CFR 63.11117 and 40 CFR 63.11116, respectively. The commenters also stated that EPA ignores the fact that the costs of compliance are often greater for the administrative burden than for the physical requirements. Therefore, according to the commenters, if EPA reduced the rule requirements coincident with gasoline use reductions, it would lower compliance costs while maintaining the environmental benefit.

One of the commenters noted that the OIAI requirement does not encourage a site to reduce its gasoline usage which would be a win-win situation for all environmental impacts. The commenter believes that EPA's 1995 OIAI policy applies to major sources subject to MACT standards, and would not apply to this area source regulation.

Several of the commenters suggested that, if a GDF can demonstrate that its monthly throughput has dropped below a throughput threshold and maintained that level for a set period of time (commenters suggested 1 year to 3 years), the GDF should be allowed to begin complying with the requirements for the lesser throughput threshold. One commenter recommended that, if a facility's GDF falls below the 100,000 gpm threshold, it should have the option to determine how and when it will maintain and test its vapor balance system rather than following the prescriptive rules. One commenter stated that EPA should allow GDF to "drop out" of NESHAP requirements once applicable throughput thresholds are no longer being met, and that EPA could limit the drop-out option to those GDF that do not exceed a throughput threshold more than a fixed number of times within a set period. The commenter stated that once a GDF exceeds the applicable throughput threshold more than the minimum allowable occurrences, the NESHAP regulations could then become permanent as EPA is proposing to do after only a single occurrence.

One commenter also states that, as with GDF, if EPA allows actual throughput volumes to determine the 20,000 gpd threshold for bulk gasoline plants as they recommend, additional language is needed to prevent permanent regulation of a facility if it exceeds the threshold due to a one-time event. The commenter stated that EPA should allow these facilities to exceed the 20,000 gpd threshold on a minimum number of days over a defined period of time before imposing permanent regulatory jurisdiction over the facility.

Response: Several commenters provide additional justifications as to why they disagree with our intent to require a GDF to continue to comply with the vapor balance requirements of the rule, even when its gasoline throughput decreases below the applicable threshold. Some commenters have referenced EPA's 1995 OIAI policy as part of their justification for changing this proposed requirement and indicated that it should not apply in this rule. We agree that the OIAI policy does not apply to area sources; therefore, it is not relevant to this rule. The OIAI policy is intended to address situations where a major source becomes an area source, which is not the case in question.[2] Thus, the OIAI policy is not relied upon for the applicable provisions in these rules.

Another commenter indicated that the OIAI policy "does not encourage reduction of gasoline usage which would be a win-win situation for all environmental impacts." First, as stated above, the OIAI policy does not apply here. Second, we disagree with the commenter's position regarding this provision's impact on gasoline usage since gasoline throughput is a function of consumer demand, and we have already considered seasonal fluctuations in the applicable definitions. In other words, we do not agree that requiring a GDF to maintain a particular level of control is what will determine the gasoline throughput at that particular GDF; instead, it is the consumer

[2] Specifically, the policy provides that major sources can become area sources up until the first substantive compliance date of the major source MACT standard.

demand for gasoline from that GDF that will dictate its gasoline throughput. Additionally, a GDF has the option of establishing an enforceable gasoline throughput limit in its applicable permit if that GDF wants to maintain a certain maximum level of gasoline throughput below the threshold level such that the GDF is subject to less stringent control requirements in the rule.

Several additional commenters raised concerns with the compliance costs of complying with the more stringent requirements, *i.e.,* vapor balance system rather than submerged fill. However, as stated in the proposed amendments (74 FR 66478), "neither of these control technologies requires significant ongoing operating costs[; rather,] the primary control costs that the facility would incur would be for the initial installation [of the equipment]." The ongoing operating costs (*e.g.,* inspection and maintenance of controls plus monitoring, recordkeeping, and reporting costs) associated with running either a submerged fill system or a vapor balance system are reasonable for GDF based on the low costs for these items. For vapor balance systems, these costs include inspection and maintenance of the system (about $180 per year [3]), the periodic pressure testing (estimated to cost about $700 and is required once every three years, or about $230 per year) and other monitoring, reporting, and recordkeeping requirements (about $575 per year). For submerged fill systems these costs would be similar (inspection and maintenance costs are estimated to be about $100 per year, plus similar monitoring, reporting, and recordkeeping costs of about $340) except that there is no vapor pressure required. In other words, the annualized costs of running the vapor balance system are estimated to be only $310 ($80 plus $230) per year higher than the costs of running a submerged fill system. Therefore, we disagree that the costs of complying with the vapor balance system requirements should be a reason for allowing facilities that cross the applicable threshold level to instead continue complying with the submerged fill requirements. Instead, as we stated previously (74 FR 66478), "it would most likely be more trouble and expense to discontinue the use of [either of] the controls and to properly remove the equipment than to continue their use." Also, "it would be reasonable to assume that if a facility once crossed an applicable throughput threshold, it might do so again at some point in the near future. Thus, in addition to the environmental gain in requiring the continued use of controls, there is a practical economic incentive to maintaining the equipment." (74 FR 66478) Finally, as also stated in the proposed amendments, requiring vapor balance systems to remain operational at GDF "will continue to achieve substantial emissions reductions, even if the facility's throughput decreases below the applicable thresholds." (74 FR 66478)

Based on the above, we have decided against allowing a facility to drop controls when gasoline throughput falls below an applicable threshold as it will not result in a significant reduction in compliance costs and it will not have an overall benefit to the environment. We are therefore finalizing these provisions as proposed.

2. Monthly Throughput Definition

We proposed revising the definition of monthly throughput in 40 CFR part 63, subpart CCCCCC, to remove the phrase "rolling 30-day average" in the final rule, as well as adding a clarification on how it is calculated. We also proposed adding text to allow throughput to be based on the volume of gasoline dispensed by a GDF.

Comment: Commenters believe that the definition of "monthly throughput" and the requirement in 40 CFR 63.11111(e) to demonstrate/document throughput, when taken in conjunction with the proposed amendments to the definition of GDF, will impose additional and unnecessary recordkeeping requirements for facilities. One of the commenters stated that the requirement that affected sources calculate their throughput every day will be a large new administrative burden on newly-covered sources with absolutely no environmental benefit. The commenter stated that EPA's proposal will require them to dedicate resources to calculate gasoline throughput for each day of the year, and claims this is an unreasonable administrative burden, and that EPA should revise the proposal to read as follows: "Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a calendar month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current month, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 11 months, and then dividing that sum by 12."

One commenter further stated that determining throughput categories based on calendar year data would be much easier, and in the worst case, would result in a delay in determining the applicability of a particular requirement to a given facility of 1 year. The commenter stated that, given that facilities whose throughput increases to a level that requires greater controls are given 3 years to comply, a modest delay in how soon this throughput increase is detected does not seem that significant.

One commenter suggested the calculation be simplified by allowing a facility to use the calendar year annual throughput divided by 12 to calculate monthly throughput. This commenter believes this would simplify the calculation significantly for these facilities and will maintain the benefit of eliminating seasonal variations. The commenter stated that many GDF that submit calendar year annual throughputs to the county, obtain those numbers directly from their suppliers based on annual gasoline purchased for the calendar year.

Response: We continue to believe that the proposed procedure for calculating throughput at a GDF is appropriate and have finalized that procedure in the final rule. As we stated in the preamble to the proposal (74 CFR 66478), this was the method used to analyze the environmental and cost-effectiveness calculations for the throughput thresholds. We believe that this procedure is the best way to avoid the impacts of seasonal variations in throughput calculations because it is based on data that cover an entire year. For example, facilities that have a significant spike in throughput in the summer months are able to lower that spike by including the throughput during fall and winter in the calculation. In other situations, throughput may peak in the fall and winter months, and be low in the summer.

As one commenter pointed out, basing the calculation on the calendar year period would result in facilities determining their throughput and the applicable control requirement, only once per year. We do not consider this to be appropriate nor that it represents our intent that facilities achieve continuous compliance with the standards.

The throughput calculation procedure is simple and will not require facilities to expend significant extra resources. It seems reasonable to expect that nearly all GDF facilities already keep a record of each cargo tank delivery of gasoline

[3] "Gasoline Distribution Area Source Control Cost Estimates" October 3, 2006, prepared for the November 9, 2009 proposed rule. Docket item EPA–HQ–OAR–2006–0406–0063.

to the facility. For those days when no deliveries are made, the facility would merely enter a "zero" in their records. In addition, the rule does not require that the actual calculation of throughput be performed every day. For example, a facility that receives a delivery of gasoline once per week could update the running volume of gasoline delivered, and perform the throughput calculation only on those days when a delivery is made. For each intervening day when no deliveries are received, the calculated monthly throughput would always be equal to or less than that calculated on the day of the last delivery. For the reasons described above, we have concluded that the procedure for calculating monthly throughput is appropriate.

Comment: One commenter stated that the definition of "monthly throughput" in 40 CFR 63.11132 gives a choice for calculating monthly throughput as either the total volume of gasoline that is loaded into all gasoline storage tanks, or the total volume of gasoline that is dispensed from all gasoline storage tanks. The commenter stated that clarification is needed that, if one method is chosen over the other, the source must then stay with that choice of calculating monthly throughput for the duration of existence of the GDF for clarity, simplicity, and enforcement purposes, or recommended that one of the choices be taken out of the rule.

Response: We agree with the commenter that facilities subject to 40 CFR part 63, subpart CCCCCC should be required to document whether they have chosen to calculate monthly throughput based on gasoline volume loaded into all storage tanks or gasoline volume dispensed from all storage tanks. We have revised 40 CFR 63.11124(a)(2) and (b)(2) to include a requirement that facilities must state in their NOCS report the basis they will use to calculate monthly throughput. The second sentence in each of these paragraphs now reads: "The NOCS must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facilities' monthly throughput is calculated based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks."

Comment: One commenter recommends that EPA add a sentence to the proposed new definition for "monthly throughput" in 40 CFR part 63, subpart CCCCCC, stating that the Administrator may allow GDF with less than 10,000 gpm throughput to use alternative methods for calculating their monthly throughput.

Response: We have not made any changes to the definition based on this comment. The commenter did not offer any recommendations regarding alternative methods that could be used or any reasons why alternative methods would be beneficial. We believe that by offering facilities the choice of calculating throughput based on the volume of gasoline delivered to the facility, or on the volume of gasoline dispensed from the facility, we have provided sufficient flexibility. Also, requiring all affected facilities to use one of these two approaches for calculating their throughput will simplify the implementation and enforcement of the rule.

Comment: One commenter fully supports the proposed method of calculating monthly throughput for GDF and believes that it is a more equitable method to determine GDF monthly threshold throughputs. However, with regard to daily throughput calculations for bulk gasoline plants, the commenter noted that EPA is proposing new language in 40 CFR 63.11081 that specifically prohibits averaging to determine actual throughput thresholds. Instead, according to the commenter, the NESHAP require the 20,000 gpd threshold to be based on the maximum calculated design throughput for any single day. The commenter believes, as with GDF, the maximum daily throughput for bulk gasoline plants should be based on actual daily throughputs averaged over a 365-day period. The commenter stated that determining the 20,000 gpd threshold based on maximum calculated design throughput is too broad of a standard to be a reliable determinant for applicability of the NESHAP requirements. The commenter further stated that maximum daily design throughputs can range significantly depending on factors that have nothing to do with actual throughput, or even the size of the tank. The commenter urges the EPA to adopt language that allows the 20,000 gpd throughput calculation for bulk gasoline plants to be based on the actual daily throughput averaged over 365 days. The commenter stated that this language is essential because the actual daily throughput at bulk gasoline plants is far less than the 20,000 gpd threshold under the rule. The commenter is concerned that calculation of throughput based on maximum daily design capacity rather than actual throughput could bump bulk plants up to "gasoline terminal" status under the rule, a regulatory change that would impose a much heavier compliance burden. The commenter believes that permanently regulating small bulk gasoline plants that otherwise have small daily gasoline throughput as if they were a large "gasoline terminal," based solely on maximum design capacity, and not actual throughput, serves no regulatory purpose. The commenter urges EPA to adopt language that would base threshold calculations on actual throughputs averaged over 365 days. The commenter also recommends that EPA allow these facilities to exceed the 20,000 gpd threshold on a minimum number of days over a defined period of time before imposing permanent regulatory jurisdiction over the facility.

Response: The threshold for distinguishing whether a distribution facility is a bulk gasoline plant or a bulk gasoline terminal for the purpose of these rules is the same as the threshold in 40 CFR part 63, subpart R (the major source Gasoline Distribution NESHAP), and 40 CFR part 60, subpart XX (the New Source Performance Standards (NSPS) for Bulk Gasoline Terminals). These rules were published as final rules on December 14, 1994, and August 18, 1983, respectively. Therefore, we have been using this methodology since August of 1983, and are concerned that changes made at this point would be confusing to many stakeholders. In addition, we do not want to create a situation where some facilities could fall between the definition of a bulk terminal and the definition of a bulk plant (*i.e.,* a gap in coverage). Thus, we disagree with the commenter that the definition should now be changed to use a different method for calculating throughput. It is also important to note that the definition of a bulk gasoline plant provides that facilities may limit their throughput by compliance with an enforceable condition under Federal, State, or local law. Thus, a facility whose maximum calculated design throughput is above the 20,000 gpd threshold may still be considered a bulk gasoline plant if the actual throughput is limited to less than 20,000 gpd by an enforceable condition of a permit.

3. Start of Throughput Records

We proposed in both 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC that existing sources begin keeping records and calculating throughput as of January 10, 2008 (the date of promulgation of the final rules). For new sources constructed, or for existing sources reconstructed after November 9, 2006, we proposed that recordkeeping must begin upon startup of the affected facility.

Comment: Commenters stated their concerns with the EPA's proposed dates for compliance with recordkeeping requirements. One of the commenters stated that EPA has proposed to clarify (in 40 CFR 63.11111(e)) that recordkeeping of monthly throughput should have begun when the original rule was adopted (January 10, 2008), but that this will not be possible for sites that become newly subject to the rule as a result of this rulemaking. The commenters recommended adding the following language to 40 CFR 63.11111(e): "If an existing source becomes subject to this subpart after January 10, 2008, recordkeeping must begin on the date that it becomes subject to this subpart."

One of the commenters stated that they support the proposed clarification on how to calculate the monthly throughput, but noted that requiring throughput records back to January 10, 2008, could cause a GDF that has not been tracking monthly throughput since January 10, 2008, to be out of compliance. The commenter stated that the compliance date for existing sources for 40 CFR part 63, subpart CCCCCC is January 10, 2011, and, while they agree with EPA's logic that "it is in the best interest of the facility to be aware as early as possible what control requirements must be met," there are many GDF facilities with a monthly throughput significantly less than 10,000 gallons for which control is not required. The commenter stated that these facilities should not be considered out of compliance if throughput records were not retained beginning on January 10, 2008. The commenter proposes that documentation of the monthly throughput for existing sources begins on January 10, 2010. The commenter stated that, based on the proposed definition of monthly throughput, using a start date of January 10, 2010, would provide sufficient data to determine which threshold applies.

Response: As discussed in an earlier response, we agree with the commenters that some facilities that are subject to 40 CFR part 63, subpart CCCCCC, because they dispense gasoline to end users other than motor vehicles, may not have considered themselves subject to the rule prior to the clarification of the definition of GDF. In the final rule (40 CFR 63.11113(f)), we have clarified the compliance dates for GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. Thus we are also adding text to paragraph (e) of 40 CFR 63.11111 in the final rule stating that the date of the start of recordkeeping for those existing GDF is January 24, 2011. For those new sources constructed, or for existing sources reconstructed, after January 24, 2011, recordkeeping must begin upon startup of the affected facility.

As to the second comment on changing the start of recordkeeping for existing sources from the date of the final rule (January 10, 2008) to one year prior to the final compliance date of January 10, 2011, we continue to believe that it is reasonable to expect facilities to begin keeping throughput records as soon as they become subject to the rules, and that records for 3 years of operation are better than records for only 1 year. Thus, owners or operators of all existing affected sources that did not begin keeping records as of January 10, 2008, because they did not consider themselves subject to the rules, should begin keeping records as of the date of these final revisions to the rules (January 24, 2011). All other existing sources should keep records of throughput as of January 10, 2008. As mentioned above, new sources must begin keeping throughout records upon start-up. We have clarified these requirements in the final rule at 40 CFR 63.11111(e).

4. Multiple Tanks at Multiple Locations at Affected Sources

We proposed to add a new paragraph (h) in 40 CFR 63.11111 of 40 CFR part 63, subpart CCCCCC to clarify that a single area source may have multiple GDF. We received no comments on the proposed new paragraph and have incorporated it into the final rule.

C. Rule Clarifications

1. Recordkeeping for Continuous Compliance Monitoring

The final rule language for alternative monitoring of control devices, in 40 CFR 63.11092(b)(1)(i)(B)(*2*)(*ii*) and (b)(1)(iii)(B)(*2*)(*ii*) of subpart BBBBBB, inadvertently included the emergency shutdown system among the equipment to be checked on a daily basis. The proposed amendments clarified that the emergency shutdown system, which is not part of the emissions control system, is not subject to the rule, but that the system is to be checked semi-annually. We received no comments on this amendment and have finalized the amendment, as proposed.

We also proposed revising the verification sentences in 40 CFR 63.11092(b)(1)(i)(B)(*2*)(*ii*) and (b)(1)(iii)(B)(*2*)(*ii*) of 40 CFR part 63, subpart BBBBBB to read as follows: "Verification shall be through visual observation, or through an automated alarm or shutdown system that monitors and records system operation. A manual or electronic record of the start and end of a shutdown event may be used."

Comment: Commenters supported EPA's clarification that records of shutdown events may be either manual or electronic. The commenters stated, however, that detailed requirements for the record of a shutdown event are specified in 40 CFR 63.11092(b)(1)(i)(B)(2)(v) and (b)(1)(iii)(B)(2)(v), and, thus, the phrase "start and end of a" is unnecessary and potentially confusing. The commenters request that this phrase be deleted such that the sentence reads as follows: "A manual or electronic record of the shutdown event may be used."

Response: In previous comments on this paragraph, the commenters suggested that either manual or electronic records of shutdown events should be allowed. We agreed with the commenter that the intent of the provision was to generate a record of such events, not to specify the exact form in which the record was generated. Thus, the revision that we proposed would allow for the manual recording of a shutdown event as an alternative to an electronic record. We disagree with the commenter, however, that the record of a shutdown event should not include both the time that the event began and the time that the unit was restarted after the event ended. It is important that the beginning and ending times, and, thus, the duration of such an event, be recorded. We consider the requirements in the paragraph to be clear and reasonable, and to meet the commenter's original desire that manual records be allowed. We have finalized the text of this paragraph as proposed.

2. Submerged Fill Drop Tube Measurements and Alternatives

One stakeholder questioned how to measure the distance of the fill pipe from the bottom of the gasoline storage tank when the end of the fill pipe is cut at a 45 degree angle. In the preamble to the proposed rule, we explained that the measurement of the distance of the fill pipe from the bottom of the gasoline storage tank should be made at the point in the opening of the pipe that is the greatest distance from the bottom of the gasoline storage tank. We did not receive any comments on this approach.

We proposed, in both subparts, to allow existing gasoline storage tanks to have fill pipes that are further from the bottom of the gasoline storage tank than specified in 40 CFR 63.11086(a) and 40 CFR 63.11117(b) if the owner can demonstrate that at all times the level of the liquid in the gasoline storage tank is above the entire opening of the fill pipe,

provided adequate recordkeeping is performed, and records are maintained.

Comment: Commenters expressed concerns related to the proposed amendment to 40 CFR 63.11086. The commenters stated that it is not clear what kinds of records will be required, and it will be difficult for field inspectors to ensure compliance. One of the commenters questioned whether daily delivery and dispensing records would be sufficient, or if an instantaneous accounting of gasoline storage tank level would be required. One commenter stated that it would require a great deal of work for an inspector to determine that the level had actually NEVER fallen below the acceptable level between inspections, and, in reality, the records would probably never be checked. The commenter believes that the effort of reviewing the proper records would be much more complicated than installing the properly cut fill pipe.

One commenter stated that, to ensure compliance, inspectors would have to review daily gasoline storage tank level data for months or years. The commenter further stated that, given the lack of specificity in the proposal as to how the necessary records must be kept by the facility, there could be significant recordkeeping differences, and extremely large data review would be required to determine compliance. The commenter then stated that to have to review months of this type of data could be quite time-consuming for the inspector. The commenter stated that most State regulations that have been in place for years just specify a depth for the drop tube, such as the 6-inch or 12-inch length, and this has not presented significant difficulty for tank owner compliance. Two of the commenters recommended that EPA modify the regulations to require a specific length for the drop tube.

Response: The proposed amendment to 40 CFR 63.11086 provides an alternative to meeting the applicable 6- or 12-inch requirement for submerged fill pipes, and should not be chosen by the owner or operator if they cannot maintain proper documentation because it is, or becomes, too burdensome. We proposed, and have finalized, this alternative for owners or operators in cases where they "can demonstrate that the liquid level in the gasoline storage tank is always above the entire opening of the fill pipe." We also specified that "documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit." We did not specify how the owner or operator should make such a demonstration, but merely provided them the alternative to do so. Thus, it is the responsibility of the owner or operator to document to the inspector's satisfaction that the liquid level in the gasoline storage tank prior to each loading is sufficient to cover the fill pipe. Basically, the owner or operator will have the dimensions of the gasoline storage tank and the depth of the drop tube, and, from that information, can calculate the amount of gasoline that must remain in the tank to always keep the end of the fill pipe submerged. Thus, the owner or operator must keep records of those calculations and of the amount of gasoline that is always maintained in the gasoline storage tank prior to refilling the gasoline storage tank.

Comment: One commenter asked if "portable" fill tubes are forbidden by the rule. The commenter stated that they have some facilities with smaller gasoline storage tanks (typically <2,000 gallons), particularly aboveground gasoline storage tanks, that use portable fill tubes when filling the gasoline storage tanks, as allowed by their local regulations for GDF, and asks that this be addressed in the rule.

The same commenter also stated that they have facilities that have fill tube diffusers installed at the bottom of the fill tubes which prevent the measurement of tube depth from the bottom of the gasoline storage tank. The commenter questioned how they should verify on-going compliance of these facilities with the depth requirements. The commenter recommended the rule specifically state how on-going compliance with the depth requirement is verified.

Response: The rule does not specify that fill pipes must be permanently installed. Therefore, the types of portable fill pipes mentioned by the commenter are not forbidden by the rule. With regard to the commenter's question about fill pipes that have diffusers installed, we can only recommend that the inspector work with the owner or operator of the gasoline storage tank to obtain sufficient information on the design of the diffuser so that the actual measurement of the fill pipe can be adjusted to account for the diffuser. The commenter, a county enforcement agency representative, did not state how they currently account for the diffusers when performing inspections of facilities within the county.

3. Continuous Compliance Monitoring of All Vapor Processors

We proposed clarifications that the intent in 40 CFR part 63, subpart BBBBBB was to provide that all vapor processors required in Table 2 item 1(b) for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gpd, or greater, must have continuous compliance monitoring under 40 CFR 63.11092(b). We proposed to clarify 40 CFR 63.11092 by restructuring paragraphs (b) and (b)(1) as follows: (1) Revised 40 CFR 63.11092(b) becomes the introductory language that requires all affected facilities to monitor vapor processors; and (2) revised paragraph 40 CFR 63.11092(b)(1) lists the specific monitoring requirements for: (a) Carbon adsorption systems (40 CFR 63.11092(b)(1)(i)); (b) condenser systems (40 CFR 63.11092(b)(1)(ii)); and (c) thermal oxidation systems (40 CFR 63.11092(b)(1)(iii)). Section 63.11092(b)(1)(iv) remains the same and contains the alternative monitoring provisions.

We also proposed clarifying our intent regarding the monitoring for the presence of a pilot flame by adding a sentence to 40 CFR 63.11092(b)(1)(iii)(B)(*1*), which reads as follows: "The monitor shall show a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off."

Comment: Commenters stated that, under the proposed amendments, EPA would require a continuous monitoring system (CMS) for any performance test option chosen under 40 CFR 63.11092(a). The commenters stated that this would extend CMS requirements to a population of control devices that had not been previously understood to be subject to those requirements. The commenters noted that the original rule promulgated in January 2008, stated that a CMS was only required for performance tests under 40 CFR 63.11092(a)(1), and excluded those addressed under 40 CFR 63.11092(a)(2) and (a)(3). The commenters stated that in EPA's proposed rule, 40 CFR 63.11092(b) and (b)(1) have been rewritten from the original rule, and the result is that CMS would now be required for all facilities covered under 40 CFR 63.11092(b)(1) through (5). The commenter expressed concern that this new language could be interpreted as requiring the installation of an add-on monitoring device where one was not previously understood to be needed. The commenter stated that this could result in a significant investment of resources.

Additionally, the commenters stated that, as contained in 40 CFR 63.11092(b)(4) and (b)(5), the proposed rule adds an 'Administrator Approval'

step that had not previously been required for sources employing 40 CFR 63.11092(a)(2) or 40 CFR 63.11092(a)(3) in lieu of 40 CFR 63.11092(a)(1). The commenters stated that this change would add an approval step to a population of control devices that were not previously deemed subject to this requirement, and that the time remaining prior to the compliance date for the rule is insufficient to develop, gain approval of, and implement a CMS plan.

Finally, the commenters stated that, given that this change in guidance has the effect of extending the CMS requirement to a population of control devices that were previously understood to not be subject to this requirement, and the fact that there had not been fair notice of this change, EPA should extend the compliance period for implementing CMS at facilities that, in lieu of conducting a new initial performance test, utilize the provisions of 40 CFR 63.11092(a)(2) or 40 CFR 63.11092(a)(3). The commenters stated that EPA should allow 3 years from the date of publication of the final amendments for implementation of CMS for these facilities.

Response: The General Provisions defines CMS as "a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation." Thus, a CMS is not necessarily an add-on emissions monitor, but may be any type of manual or automatic monitoring that shows that the pollution controls are operating properly on a continuous basis. For example, a heat-sensing device installed in proximity to the pilot light of a flare to indicate the presence of a flame would be a CMS because it would show whether or not the flare was operational.[4]

As stated in the preamble to the proposed amendments (74 FR 66481), it was our intent that all vapor processors required under item 1(b) of Table 2 to 40 CFR part 63, subpart BBBBBB for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gpd, or greater, must have continuous compliance monitoring under 40 CFR 63.11092(b). The January 10, 2008, final rule did not exempt anyone from the continuous monitoring requirements. Thus, it is not clear how the commenters came to their conclusion that some facilities did not have to comply with the continuous monitoring requirements. However, given that there was confusion, and given that the commenters are trade organizations that represent the majority of bulk gasoline terminals, we agreed that clarifications were needed. We proposed such clarifications and are finalizing them in this rulemaking.

The commenter also mentioned Administrator approval as a new requirement. As explained above, it has always been our intent that vapor processors must have continuous monitoring and must comply with all of the associated requirements. The approval of the CMS monitoring plan by the Administrator (or the delegated authority) is not a new requirement but was always a part of the process of implementing the continuous monitoring provisions. In other words, the requirement for obtaining Administrator approval was included in the final rule and was not newly proposed in the proposed amendments (73 FR 1936–1938).

CAA section 112(i)(3)(B) provides that EPA, or the delegated State or local authority, may grant an existing source a 1-year extension for compliance with an emission standard if such time is needed to install controls for meeting the standard. However, because the continuous monitoring requirements that we have clarified in these amendments are not emission standards, we are not extending the compliance date for these continuous monitoring requirements.

Comment: Commenters support EPA's clarification that monitoring the pilot flame on a thermal oxidation system meets the requirements for a CMS, with the presence of the pilot flame constituting the monitored operating parameter. The commenters request, however, a clarification in the rule language. The commenters stated that the requirement is for the monitoring system to "automatically prevent gasoline loading operations from beginning at any time that the pilot flame is absent." Thus, according to the commenters, the requirement is for the heat-sensing device to send a signal (or refrain from sending a signal) to allow loading to commence, rather than to visually display the parameter value (*i.e.,* on or off). The commenters recommended that this clarification might be achieved by the following edits to the rule language: 40 CFR 63.11092(b)(1)(iii)(B)(1), "The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light to indicate the presence of a flame. The heat-sensing device shall send a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off."

Response: We considered the clarification recommended by the commenters and agree that the purpose of the heat sensing device is to send either a positive or a negative parameter value as a signal to indicate the presence or absence of the pilot flame. Thus, it is the action of sending the appropriate signal to the loading system that is significant, not the actual "displaying" of the positive or negative parameter value. In the final rule, we have incorporated the clarification into 40 CFR 63.11092(b)(1)(iii)(B)(*1*), as recommended by the commenters.

4. Secondary Rim Seal Requirements Specified Under 40 CFR Part 63, Subpart WW

We proposed clarifying in item 2(d) in Table 1 to 40 CFR part 63, subpart BBBBBB, that the same rim seal requirements are intended regardless of whether the owner/operator opts to comply with 40 CFR part 60, subpart Kb, or 40 CFR part 63, subpart WW. In either case, the secondary seal requirements are meant to not apply to internal floating-roof tanks that are subject only to 40 CFR part 63, subpart BBBBBB.

Comment: Commenters stated that they appreciate EPA's intended clarification, but stated that EPA's attempt to make the necessary corrections in Table 1 failed to properly do so. The commenters provided edits to the proposed Table 1 revisions that they claim will clearly specify that the secondary seal requirements from 40 CFR part 60, subpart Kb (40 CFR 60.112b(a)(1)(ii)(B) and (a)(1)(iv) through (ix)), or 40 CFR part 63, subpart WW (40 CFR 63.1063(a)(1)(i)(C) and (D)) do not apply to internal floating roof tanks that are subject only to 40 CFR part 63, subpart BBBBBB.

Response: We reviewed the commenter's recommended edits to the proposed Table 1 revisions and agree that the edits are appropriate. In the proposal, we inadvertently referred to the secondary seal requirements from 40 CFR part 63, subpart WW in the same Table 1 entry as the requirements from 40 CFR part 60, subpart Kb. Our intent was to discuss subpart Kb and subpart WW in separate Table 1 entries. Thus,

[4] It is our understanding that all control devices include process monitors such as these to assist the owner/operator in the proper operation of the device. Thus, these CMS are not likely to be significantly different than what would be used in the absence of these standards.

we have revised the text of items 2.(b) and 2.(d) in Table 1 to 40 CFR part 63, subpart BBBBBB to read as follows:

"(b) Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the secondary seal requirements under § 60.112b(a)(1)(ii)(B) and the requirements in § 60.112b(a)(1)(iv) through (ix) of this chapter;"

"(d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in § 63.1063(a)(1) and (b), except for the secondary seal requirements under § 63.1063(a)(1)(i)(C) and (D), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1)."

5. Monitoring of Submerged Fill Loading Racks

We proposed a clarification that the testing and monitoring provisions of 40 CFR 63.11092 in subpart BBBBBB do not apply to bulk gasoline terminals with throughputs below the threshold value of 250,000 gpd. We received no comments related to the proposed clarification and have incorporated it into the final rule.

6. Initial Notifications

We did not propose revisions to the Initial Notification requirements, but we did solicit comment on whether the provisions, as written, including those in the General Provisions, are sufficient for accommodating all facilities who find it necessary to submit a revised Notification or a new Notification as a result of amendments to the rule.

Comment: One commenter restated that EPA should clarify how newly-subject sites should proceed with submitting Initial Notifications. The commenter stated that, in the preamble, EPA states that newly-subject sites would have 120 days after the source becomes subject to the relevant standard to submit the Initial Notification in accordance with 40 CFR 63.9(b)(2). The commenter stated that 40 CFR 63.11124(a)(1) does not reference 40 CFR 63.9(b)(2), however, and that confuses the subject. They suggested edits to 40 CFR 63.11124(a)(1) that would revise the first sentence to read: "You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or within 120 calendar days after you become subject to § 63.11117, whichever is later, unless you meet the requirements in paragraph (a)(3) of this section."

Response: We agree with the commenter that those GDF that would be considered "newly-subject" affected sources as a result of revisions to the subparts should have adequate time to submit new or revised Initial Notifications. We have included in the final rule provisions that specify that sources that have become affected sources as a result of the revisions to the subpart have 120 days in which to submit the Initial Notification.

For GDF, in the final rule we have clarified the compliance dates for GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. We have also added rule text in 40 CFR 63.11124 [5] stating that GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, must submit Initial Notifications [6] by May 24, 2011. Those sources include GDF that dispense gasoline into portable tanks or to end users other than motor vehicles, as defined in 40 CFR 63.11132, and that may not have considered themselves subject to the rule prior to the clarification of the definition of GDF.

7. Notification of Compliance Status (NOCS)

In the January 10, 2008, final rule (40 CFR part 63, subpart CCCCCC), 40 CFR 63.11124(a)(2) and (b)(2) stated that the NOCS be submitted by the compliance date specified in 40 CFR 63.11113. However, Table 3 indicates that the NOCS should be submitted according to the schedule specified in 40 CFR 63.9(h), which states that the NOCS is due 60 days following the compliance demonstration. Stakeholders pointed out this inconsistency, and we proposed revising the rule text in 40 CFR 63.11124(a)(2) and (b)(2) to be consistent with the 60-day time frame specified in 40 CFR 63.9(h) for submittal of the NOCS for GDF. In each paragraph, the revised text would read as follows: "You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h)."

Comment: One commenter stated that, because there are no initial performance tests or compliance demonstrations for owners and operators subject to the control requirements in 40 CFR 63.11117 (submerged fill), it is unclear when the NOCS is due for these sources. The commenter stated that if it is EPA's intent for sources subject to the control requirements in 40 CFR 63.11117 to submit their NOCS within 60 days of the compliance date, this should be expressly stated in the rule.

Response: We agree with the recommendation made by the commenter, and have included the 60-day timeframe for the submittal of the NOCS in 40 CFR 63.11124(a)(2), which now reads: "You must submit a Notification of Compliance Status to the applicable EPA Regional office and the delegated State authority, as specified in § 63.13, within 60 days of the applicable compliance date specified in § 63.11113, unless you meet the requirements in paragraph (a)(3) of this section."

8. Storage Tank Inspections

We received several questions from stakeholders regarding the specific requirements for gasoline storage tank inspections under 40 CFR part 63, subpart BBBBBB. However, we proposed to leave the gasoline storage tank inspection requirements unchanged from the January 10, 2008, final rule. We received no comments related to this proposal, and have not revised the gasoline storage tank inspection requirements.

9. General Provisions Applicability

We proposed to revise certain entries in Table 3 to 40 CFR part 63, subpart BBBBBB, and Table 3 to 40 CFR part 63, subpart CCCCCC, to eliminate requirements related to startup, shutdown, and malfunction (SSM) plans, which are not required under these subparts. We proposed that in the "applicability" column in Table 3 for each subpart, the entries for 40 CFR 63.7(e)(1), 63.8(c), and 63.10(b)(2)(i) through (iv) be changed from "yes" to "no." Since proposal, we have identified certain other provisions listed in Table 3 to each subpart that are related to the now vacated SSM provisions (*Sierra*

[5] 40 CFR 63.11124(a)(1) applies to GDF with monthly throughput of 10,000 gallons of gasoline or more, and 40 CFR 63.11124(b)(1) applies to GDF with monthly throughput of 100,000 gallons of gasoline or more. As specified in 40 CFR 63.11116(b), GDF with monthly throughput of less than 10,000 gallons of gasoline are not required to submit notifications or reports, but must have records available within 24 hours of a request by the Administrator to document gasoline throughput.

[6] These notifications must include the following information: The name and address of the owner or operator; the address (*i.e.,* physical location) of the affected source; an identification of the relevant standard, or other requirement, that is the basis of the notification, and the source's compliance date; a brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and a statement of whether the affected source is a major source or an area source. Notifications must be submitted to the Administrator, the appropriate Regional office, and the State, as specified in 40 CFR 63.9.

Club v. *EPA,* 551 F 1019 (DC Cir., 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010)), and that warrant revision. Specifically, in the final rule, we have revised Table 3 to subpart BBBBBB to specify that the following provisions do not apply: 40 CFR 63.6(e)(1)(i) and (ii), 63.7(e)(1), 63.8(c)(1)(i) and (iii), 63.10(b)(2)(i), (ii), (iv) and (v). We have revised Table 3 to subpart CCCCCC to specify that the following provisions do not apply: 40 CFR 63.6(e)(1)(i) and (ii), 63.7(e)(1), 63.8(c)(1)(i) and (iii), 63.10(b)(2)(i), (ii), (iv) and (v). We also added language to both subparts BBBBBB and CCCCCC specifying that owners or operators have a general duty to minimize emissions and provisions for recordkeeping and reporting of periods of malfunctions of process equipment, or air pollution control and monitoring equipment.

As stated earlier, in the proposed amendments we proposed to change the "yes" to a "no" in the "applicability" column of Table 3 in both subparts BBBBBB and CCCCCC for the following provisions: 40 CFR 63.8(c)(1)(ii) and 63.10(b)(2)(iii). We proposed these changes because we received comments from stakeholders that these provisions relate to SSM plans, which are not required under these rules. After further reviewing these provisions, we found that these particular provisions are not SSM-related; rather, these provisions address CMS equipment and maintenance of air pollution control and monitoring equipment, respectively. Therefore, for subpart BBBBBB, we are not making the proposed changes but instead will finalize Table 3 in subpart BBBBBB to indicate a "yes" for the applicability of these provisions. Subpart CCCCCC does not have any CMS requirements, so we will finalize the "no" for 63.8(c)(1)(ii) and a "yes" for 63.10(b)(2)(iii) for the applicability of these provisions in Table 3 to subpart CCCCCC.

We also proposed amending the entry for 40 CFR 63.5 (submittal of construction/reconstruction notifications) in Table 3 to 40 CFR part 63, subpart CCCCCC to state that the requirements of 40 CFR 63.5 do not apply to facilities that are only subject to 40 CFR 63.11116. The only control requirements that these facilities are subject to are the Management Practices specified in 40 CFR 63.11116; therefore, the submittal of notifications is not necessary. We did not receive any comments on this proposed amendment, and are finalizing the amendment as proposed.

Comment: One commenter supports most of the revisions that EPA proposed relative to the General Provision requirements. The commenter suggested, however, that EPA revise Table 3 to clarify the Agency's intent that facilities with gasoline throughput less than 10,000 gallons are not required to submit any notifications or reports. The commenter stated that, as written, Table 3 appears to require such facilities to submit some notifications (such as compliance certifications under 40 CFR 63.9(h)). The commenter suggested that EPA include a statement in Table 3 that the requirements of 40 CFR part 63, subpart A do not apply to facilities only subject to 40 CFR 63.11116.

Response: We disagree with the commenter's suggestion that Table 3 be revised to specifically note each requirement that does not apply to GDF that are subject only to the management practices in 40 CFR 63.11116. We have, however, revised the text in 40 CFR 63.11116(b) to state that "you are not required to submit notifications or reports as specified in § 63.11125, § 63.11126, or subpart A of this part." This text appears sufficient to exclude applicable sources from the General Provision requirements to submit notifications or reports.

10. Compliance Testing for GDF

In the December 15, 2009, proposal, we presented the results of our analysis of whether *Bay Area Air Quality Management District Source Test Procedure ST–30,* a test method for static pressure testing of a vapor balance system, could be accepted as an alternative to the *California Air Resources Board (CARB) 201.3* procedure required under 40 CFR 63.11120(a)(2) of 40 CFR part 63, subpart CCCCCC. We found that the original version of Bay Area ST–30 did not include procedures for testing the integrity of p/v valves installed on the gasoline storage tanks, and, therefore, would not be an acceptable alternative to CARB 201.3. However, we also found that the Bay Area Air Quality Management District amended Bay Area ST–30 on December 21, 1994, to add the p/v valve and p/v valve connections as components of the system during the testing, and that CARB subsequently issued a letter of equivalency stating that Bay Area ST–30 was equivalent to CARB 201.3. We proposed that Bay Area ST–30, as amended on December 21, 1994, be considered to meet the requirements of subpart CCCCCC.

We did not receive any comments regarding our analysis of Bay Area ST–30, or our proposal that it be allowed as an alternative to CARB 201.3. Therefore, in the final rule, we have incorporated Bay Area ST–30 by reference as an allowable alternative test method, and have revised the text of 40 CFR part 63, subpart CCCCCC accordingly.

Comment: Commenters believe that all sources should be subject to testing requirements under 40 CFR part 63, subpart CCCCCC to ensure the equipment is functioning properly, and meeting compliance and manufacturer specifications to insure equitable treatment. One commenter notes that 40 CFR 63.11120 states: "The second option (compliance under § 63.11118(b)(2)) does not require the periodic testing in § 63.11120(a), but periodic testing may be required under State, local, or Tribal rule or permits." The commenter believes this is a problem as many GDF located in rural areas most likely not affected by existing State rules will be subject to expensive testing requirements, while those regulated in the urban areas and having the most impact on sensitive populations may not be subject to testing requirements, depending upon State, local, or Tribal rule. The commenter stated that they feel the time period for all sources to eventually become subject to testing requirements as "new" will produce an inequity among the industry that may not make regulatory nor economic sense. The other commenter stated that it is the older systems that are more prone to leakage because they lack many of the leak prevention features, such as adaptors, that will not leak when loosened or over-tightened, as required for the newer systems, yet they may never be tested. The commenter stated that if periodic testing is needed for newer systems to verify the effectiveness of the vapor recovery system, then it most surely is also needed for the older systems. The commenter noted that the components that most often leak vapors from storage systems, such as the vapor adaptors, spill containment manhole drain valves, and p/v vent valves, are readily accessible from grade, and do not require excavation to be repaired or replaced. The commenter stated that keeping older systems vapor tight should be no more of a chore than keeping the newer systems vapor tight.

Response: We did not propose any change to the periodic testing requirements for GDF in the December 15, 2009, proposal, nor have we made any change in the final rule. Many facilities that are complying with State, local, or Tribal rules or permits, and have chosen to comply with the compliance option under 40 CFR 63.11118(b)(2), will be required under the State, local, or Tribal rule or permit to perform some combination of periodic inspection and testing of the

vapor balance systems. We do not want to interfere with, or create unnecessary duplication of, the operation of these State, local, or Tribal programs. Additionally, over time, all will perform this testing because reconstructed GDF or new GDF starting up on or after January 10, 2008, will be subject to the periodic testing under this rule.

Comment: We proposed adding a new paragraph (e) to 40 CFR 63.11113 in 40 CFR part 63, subpart CCCCCC to specify that new sources (installed after November 9, 2006) must test within 180 days after startup, and existing sources must conduct all performance tests within 180 days after the compliance date (if installed on or before December 15, 2009), or upon installation of the complete system (if installed after December 15, 2009). We proposed this new paragraph because the dates by which periodic tests should be conducted were not explicitly stated in the January 10, 2008, final rule. One commenter believes that setting the compliance date for existing facilities based on the December 15, 2009, date of EPA's proposed amendments adds an additional level of confusion and complexity for affected GDF, and for delegated State agencies implementing and enforcing these regulations. The commenter believes the performance testing deadline for existing facilities should be consistent with the NESHAP General Provisions, and with other NESHAP regulations. The commenter recommends that EPA revise the proposed amendments for 40 CFR 63.11113(e)(2) to the following:

"(2) For an existing affected source, the initial compliance test must be conducted no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section."

Response: The January 10, 2008, final rule and the December 15, 2009, proposed amendments contain a requirement that facilities must test their vapor balance systems "at the time of installation." As explained in the preamble to the proposal (74 FR 66484, third column), the best time to perform the initial test of these systems is when they are being installed. We recognize, however, that many facilities already have vapor balance systems installed, and that not all of these systems may have been tested at the time of installation. We proposed that these systems must conduct their initial tests within 180 days after the compliance date because we had failed to specify a date in the final rule text, and because 180 days after the compliance date is consistent with 40 CFR 63.7(a)(2) in the General Provisions that was referenced as applicable in the final rule. We believe the commenter missed the point that the rule requires new sources and existing sources that have to install a new vapor balance system to test that system at the time of installation. We continue to believe that is appropriate.

11. Gasoline, Denatured Ethanol, and Transmix

Several commenters submitted comments regarding the relationship between the proposed definition of gasoline and the proposal that emissions from the storage of denatured ethanol and transmix be subject to the standards.

Comments Related to the Definition of Gasoline

We proposed adding the definition of gasoline to these subparts even though the NSPS is cross-referenced in the definitions of 40 CFR part 63, subparts BBBBBB and 40 CFR part 63, subpart CCCCCC. The proposed definition is as follows: "Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as a fuel for internal combustion engines." We received no negative comments on incorporation of this definition, so the final rules include this definition.

Comments Related to Denatured Ethanol

We stated in the preamble the following (74 FR 66485): "[W]e are proposing that any gasoline mixture with alcohol should be considered gasoline, and be controlled under the current control requirements in subpart BBBBBB and CCCCCC. We are asking for comment on including any mixture, on whether this level of control is appropriate, and if not, we are requesting data on what level of control of those emissions is appropriate." We proposed that such mixtures should be controlled the same as gasoline and asked for comment.

Comment: Commenters stated that denatured ethanol does not meet the definition of gasoline, and that it is not appropriate to regulate denatured ethanol under any NESHAP because it contains only a *de minimis* concentration of HAP. The commenters stated that non-gasoline sources in the petroleum liquids distribution system have been previously evaluated by EPA in the Organic Liquids Distribution (Non-Gasoline) source category, for which EPA determined that an area source rule was not warranted. The commenters stated that this source category was limited to gasoline distribution (not ethanol or transmix). The commenters stated that the item in the affected source was "gasoline storage tanks," but, through what EPA is proposing, it has effectively become "tanks storing or processing gasoline or any mixture that contains any amount of gasoline." The commenters pointed out that on page A–27 of EPA's document, *Documentation for Developing the Initial Source Category List-Final Report,* EPA–450/3–91–030, July 1992, EPA clearly defines the Gasoline Distribution source category. They further stated that EPA has not provided adequate notice and comment (including a cost- effectiveness demonstration) justifying the expansion of this source category. The commenters also stated that EPA repeatedly dismisses the third criterion of the "gasoline" definition. The commenters stated that, specifically, ethanol is not a "fuel for internal combustion engines." The commenters further stated that ethanol (even when denatured) cannot be directly consumed in an internal combustion engine without true gasoline to facilitate its combustion, and that these emission sources were not included among the emission sources for which the determination of a need for a gasoline distribution area source rule were based, nor were they included in the evaluation of control measures for this rule. The commenters stated that the inclusion of denatured ethanol in the definition of gasoline will create significant regulatory burdens with little to no benefit for reducing the release of HAP to the environment. One commenter also provided data supporting their claim that the proposed control of denatured ethanol tanks is not cost-effective.

The commenters further stated that if EPA does extend the applicability of this rule to tanks storing denatured ethanol, then the required control measure should be the same as specified in the proposed item 3 to Table 1 for surge control tanks, in that the requirements of Table 1, item 2 would not be warranted for the *de minimis* level of HAP involved. The commenters also stated that EPA should specify a separate compliance period for tanks that would become subject to the rule solely by virtue of storing denatured ethanol—allowing 3 years from the date of publication of the final amendments.

One commenter stated that if EPA intended to propose an alternative definition for "gasoline," EPA should have included the alternative definition in the proposed rule amendments rather than simply mentioning its proposal in the preamble. The commenter believes that EPA should allow stakeholders a clear opportunity to comment on the

specific definition or definitions that EPA is proposing. Second, the commenter believes that it is important to ensure consistency among standards regulating gasoline (NSPS, major source NESHAP, and area source NESHAP) and to make certain that only the affected source categories are regulated under 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC.

Response: As discussed above, we have finalized the definition of gasoline as proposed. Our intention was not to change the definition of gasoline, but instead to incorporate the established definition into these standards instead of simply referring to the definition in other standards.

Commenters provided many reasons to support their position that emissions from the storage of denatured ethanol should not be regulated under 40 CFR part 63, subpart BBBBBB or 40 CFR part 63, subpart CCCCCC. We considered the comments, and agree that it is not appropriate to include the storage of denatured ethanol in this source category. Denatured ethanol does not meet the definition of "gasoline" because it typically does not have "a Reid vapor pressure of 27.6 kilopascals or greater" and it is not "used as a fuel for internal combustion engines." Thus, tanks storing denatured ethanol are not "gasoline storage tanks," and, therefore, not subject to subpart BBBBBB or subpart CCCCCC. In addition, we determined that the potential environmental benefit (HAP reduction) is minimal, and that the installation of storage tank controls (floating roofs) on a tank storing denatured ethanol containing 5-percent gasoline is not cost-effective.[7] For these reasons, we concluded that tanks storing denatured ethanol should not be included in the Gasoline Distribution source category; therefore, the final rule does not include the storage of denatured ethanol as an affected source.

Comments Related to the Handling of Gasoline-Ethanol Blends

Comment: One commenter expressed concern related to E85. The commenter thinks that specifically including E85 and other gasoline-ethanol blends is very good and important. The commenter suggested that it be required, or at least recommended, that all facilities that convert old tanks and Stage I systems for E85, or new tanks and Stage I systems follow the guidelines in the July 2006, *Handbook for Handling, Storing, and Dispensing E85,* put out by the United States Department of Energy. The commenter stated that there can be significant problems if the proper materials are not used, and if tanks that have been used for other petroleum products are not properly cleaned and proper components are not used. The commenter noted that CARB has approved a number of Stage I systems for E85, including an E85 p/v vent valve, and vapor and fill adaptors.

Response: We agree with the commenter that blends of gasoline and ethanol that are used as a fuel, and meet the definition of gasoline should be subject to regulation when they are stored at gasoline distribution facilities. We also agree that owners or operators should follow appropriate procedures, and use appropriate materials when storing and handling these blends. The purpose of these standards, however, is to require the source category to reduce HAP emissions to the applicable level. The emission standards are based on consideration of the level of HAP emissions from the affected sources and the most appropriate control technologies that are available to reduce the emissions. These standards are not intended to provide specific guidance or requirements on handling, storing, or dispensing procedures that are unrelated to HAP emission reductions. Thus, we are not requiring handbook guidance in the final rule.

Comments Related to Transmix

We proposed in the preamble that because transmix contains various concentrations of gasoline and other products, to the degree that it would not be feasible to specify in advance the percentage and concentration of gasoline in the mixture, it should be stored and considered gasoline for the purposes of these regulations.

Comment: Commenters provided comments on how the definition of gasoline related to transmix. Their comments were essentially the same as those submitted on the topic of denatured ethanol related to the definition of gasoline. Additionally, the commenters referred to the December 19, 2007, memorandum, *Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources,* Stephen A. Shedd to Kent C. Hustvedt (December 2007 EPA Memo), in which EPA stated: "The determination of whether transmix would or would not meet the definition of gasoline would depend on the ratio of the individual products included in the mixture. According to industry sources (ILTA), transmix typically contains between 35- and 65-percent gasoline and has a vapor pressure of about 2.5. Thus, transmix would not typically meet the gasoline definition's vapor pressure criteria. However, because of the potential variability of the mixture, we cannot be sure that all transmix will be excluded by the vapor pressure criteria of the definition." The commenters stated that, given this guidance, owners/operators of gasoline distribution facilities believed, in good faith, that transmix tanks would be subject to the rule only if the vapor pressure of the mixture stored in the transmix tank exceeded the criterion specified in the definition of gasoline, which is a Reid vapor pressure of 27.6 kilopascals (4 pounds per square inch). The commenters also asserted that, in stating that they could not be sure that all transmix would be excluded, EPA implicitly acknowledged that most transmix would be excluded. The commenters noted that the preamble to the proposed amendments stipulates that all transmix should be considered gasoline for purposes of the rule. One commenter stated that facilities should be allowed to test the transmix to determine applicability to this rule.

The commenters also stated that, given that this change in guidance has the effect of extending the applicability of the rule to a population of transmix tanks that were previously understood to not be subject to the rule, the fact that there had not been fair notice of this change, and the resulting requirement for many of these tanks to be equipped with internal floating roofs, EPA should specify a separate compliance period for transmix tanks—allowing 3 years from the date of publication of the final amendments.

Response: As in the case of denatured ethanol discussed above, we received numerous comments regarding the question of whether transmix should be included in the Gasoline Distribution Area Source category and should be subject to these standards. After considering these comments, we concluded that, while transmix does contain gasoline, the mixture itself does not meet all of the criteria specified in the final definition of "gasoline," which is the focus of the source category. Transmix is a mixture of gasoline and other petroleum distillates that typically contain between 35- and 65-percent gasoline, and, with the higher concentrations of gasoline, may have a vapor pressure above the 27.6 kilopascal threshold in the definition of "gasoline." However, transmix is not "used as a fuel for internal combustion engines;" therefore, transmix does not meet the

[7] We determined that the HAP cost-effectiveness of adding a floating roof to a typical tank storing denatured ethanol would be about $700,000 per ton.

definition of "gasoline." For these reasons, we concluded that tanks storing transmix should not be included in the gasoline distribution area source category; therefore, the final rule does not include the tanks storing transmix as an affected source.

12. Table 1 Requirements for "New" Storage Tanks

We proposed rule text in 40 CFR part 63, subpart CCCCCC to clarify that "new" GDF storage tanks were those constructed after the November 9, 2006, publication of the proposed rule. We received no comments related to the proposed clarification and have incorporated it into the final rule.

13. Requirements for Gasoline Containers

We proposed to add paragraph (d) to 40 CFR 63.11116 in 40 CFR part 63, subpart CCCCCC stating that "Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with paragraph (a)(3) of this section." We received no comments related to the proposed clarification, and have incorporated it into the final rule.

14. Cargo Tank Testing and Documentation

We proposed revising the definition of "vapor-tight gasoline cargo tank" in 40 CFR part 63, subpart BBBBBB (and including the same definition in 40 CFR part 63, subpart CCCCCC) to change the reference to the vapor tightness test requirements from those found in 40 CFR 60.501 (40 CFR part 60, subpart XX) to those found in 40 CFR 63.11092(f). The proposed definition reads as follows: "vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f)."

Comment: One commenter stated that the most obvious and reasonable place to look for the testing requirements for vapor tightness testing of cargo tanks at GDF would be in 40 CFR 63.11120. The commenter pointed out that 40 CFR 63.11120, which addresses all other testing and monitoring requirements, fails to include anything about the vapor tightness testing for cargo tanks. The commenter stated that, for clarity, the vapor tightness testing requirements for cargo tanks should be added to 40 CFR 63.11120. The commenter also pointed out a typographical error in proposed 40 CFR 63.11125(c). The commenter stated that the citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appears in the proposal.

Response: We agree with the commenter that it is reasonable to expect that the vapor tightness testing requirements for cargo tanks at GDF would be included in 40 CFR 63.11120, "What testing and monitoring requirements must I meet?" We have revised 40 CFR 63.11120 to include a new paragraph (d) that cross-references the vapor tightness testing requirements found in 40 CFR 63.11092(f).

We also agree with the commenter that proposed 40 CFR 63.11125(c) contains a typographical error. The citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appears in the proposal. We have corrected this error in the final rule.

Comment: Commenters requested clarification of the requirements for vapor tightness testing of gasoline cargo tanks. The commenters stated that the annual vapor tightness test specified in 40 CFR part 63, subpart BBBBBB is nominally the same as that specified in 40 CFR part 60, subpart XX. They further stated that each of these rules is understood to require pressurizing the tank to 18 inches of water column, and each rule requires that the pressure drop in 5 minutes shall not exceed 3 inches of water column. However, the commenters stated that in subpart XX, the 18-inch water column pressure is approximated as 450 millimeter (mm) of water, but in subpart BBBBBB it is approximated as 460 mm of water. The commenters further stated that subpart XX specifies the limit on pressure drop as 75 mm of water, whereas subpart BBBBBB specifies 3 inches of water. The commenters stated that the preamble to the proposed amendments characterize the subpart BBBBBB vapor tightness test requirements as being different than the requirements specified in subpart XX, and the proposed amendments change the cited requirements in the definition of a vapor-tight gasoline cargo tank from those in 40 CFR 60.501 to those in 40 CFR 63.11092(f). The commenters stated that many facilities, however, will be subject to both regulations and there is no apparent benefit to testing a gasoline cargo tank twice for essentially the same criteria. The commenters request that EPA stipulate in subpart BBBBBB that compliance with the annual vapor tightness testing specified in subpart BBBBBB satisfies the annual vapor tightness testing requirement of subpart XX.

Response: We considered the commenter's recommendation and agree that there is no reason to have two sets of testing criteria that use nearly the same pressure test. However, 40 CFR part 63, subpart BBBBBB (at 40 CFR 63.11092(f)) also requires a test under vacuum, while 40 CFR part 60, subpart XX does not. We also agree that there would be no benefit to requiring that a cargo tank be tested twice to satisfy the testing requirements in subpart XX and subpart BBBBBB (these requirements are also referenced in 40 CFR part 63, subpart CCCCCC). We have added text to 40 CFR 63.11092(f) specifying that "facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with paragraphs (f)(1) and (f)(2) of this section."

D. Comments Addressing Other Provisions That Were Not Proposed To Be Amended

Comment: Commenters request that the language of item 1(c) in Table 2 to 40 CFR part 63, subpart BBBBBB be edited to clarify the intent. A similar provision in the Marine Tank Vessel Loading MACT rule specifies that the vapor collection system shall be designed to "prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere." Commenters assert that similar clarity could be brought to this rule by editing this item to read as follows: "Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack or lane from passing through another loading rack or lane to the atmosphere."

Response: We have revised item 1(c) in Table 2 to 40 CFR part 63, subpart BBBBBB, as recommended by the commenter.

Comment: One commenter requested clarification that the analyzer for conducting monthly measurements of the carbon outlet VOC concentration (from a carbon bed) can be permanently mounted (*i.e.,* it need not be portable, as stated in the rule at 40 CFR 63.11092(b)(1)(i)(B)(1)(iii)). The commenter stated that the subject sentence in the final rule currently reads: "Measurements shall be made using a portable analyzer, in accordance with 40 CFR part 60, Appendix A–7, EPA Method 21 for open-ended lines." The commenter suggested that the phrase "or a permanently mounted analyzer" be inserted into the current rule language.

Response: We agree with the commenter that it is not necessary that the analyzer be portable and have made

the recommended revision in the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final amendments clarify, but do not add requirements that increase the collection burden. The information collection requirements contained in the existing regulations at 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC were sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved Information Collection Request (ICR) 2237.02—NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC) (Final Rule) and assigned OMB control number 2060–0620. This ICR was approved by OMB without change. The OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9. We are amending 40 CFR part 9 to add the OMB control numbers for these rules.

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 the final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (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 these final amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The final amendments do not impose any new requirement on small entities that are not currently required by the final rules (*i.e.*, minimizing gasoline spills and evaporation).

D. Unfunded Mandates Reform Act (UMRA)

These final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. These final amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA previously determined did not include a Federal mandate that may result in an estimated cost of $100 million or more (69 FR 5061, February 3, 2004). Thus, the final amendments are not subject to the requirements of sections 202 or 205 of UMRA.

The final amendments are also not subject to the requirements of section 203 of UMRA because they contain no regulatory requirements that might significantly or uniquely affect small governments. The final amendments clarify certain provisions and correct typographical errors in the rule text; thus, they should not affect small governments.

E. Executive Order 13132: Federalism

These final amendments do not have federalism implications. They 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. They provide clarification and correct typographical errors. These changes do not modify existing, or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to these final amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These final amendments do not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They 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. Thus, Executive Order 13175 does not apply to these final amendments.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final amendments are not subject to Executive Order 13211 (66 FR 18355, May 22, 2001) because they are not a significant energy 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 (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final amendments involve technical standards. In the final rule promulgated on January 10, 2008 (73 FR 1916), we considered NTTAA. Since then, an additional standard was presented by stakeholders. The EPA has decided to use that additional standard, as discussed in section IV.C.10 of this preamble, entitled "Bay Area Air Quality Management District Source Test Procedure ST–30—Static Pressure Integrity Test, Underground Storage Tanks," adopted November 30, 1983, and amended December 21, 1994. The test method will be incorporated by reference (*see* 40 CFR 63.14). This method is available at *http://www.arb.ca.gov/DRDB/BA/CURHTML/*

ST/st30.pdf, or from the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109.

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 these final amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. These final amendments do not relax the control measures on sources regulated by the rule and will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these final amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These final amendments will be effective on January 24, 2011.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following entries in numerical order under the undesignated center heading "National Emission Standards for Hazardous Air Pollutants for Source Categories" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * * * *	
63.11080–63.11100	2060–0620
63.11110–63.11132	2060–0620
* * * * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable General Provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—[AMENDED]

■ 3. The authority citation for part 63 continues to read as follows:

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

■ 4. Section 63.14 is amended by adding new paragraph (o) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(o) The following material is available from the Bay Area Air Quality Management District (BAAQMD), 939 Ellis Street, San Francisco, California 94109, and is also available at the following Web site: *http://www.arb.ca.gov/DRDB/BA/CURHTML/ST/st30.pdf.*

(1) "BAAQMD Source Test Procedure ST–30—Static Pressure Integrity Test, Underground Storage Tanks," adopted November 30, 1983, and amended December 21, 1994, IBR approved for § 63.11120(a)(2)(iii).

(2) [Reserved]

Subpart BBBBBB—[AMENDED]

■ 5. Section 63.11081 is amended by adding paragraphs (c) through (j) to read as follows:

§ 63.11081 Am I subject to the requirements in this subpart?

* * * * *

(c) Gasoline storage tanks that are located at affected sources identified in paragraphs (a)(1) through (a)(4) of this section, and that are used only for dispensing gasoline in a manner consistent with tanks located at a gasoline dispensing facility as defined in § 63.11132, are not subject to any of the requirements in this subpart. These tanks must comply with subpart CCCCCC of this part.

(d) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline

within the airport, is not subject to this subpart.

(e) The loading of gasoline into marine tank vessels at bulk facilities is not subject to this subpart.

(f) If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of "bulk gasoline terminal" or in item 1 in Table 2 to this subpart, the affected source will remain subject to the requirements for sources above the threshold, even if the affected source throughput later falls below the applicable throughput threshold.

(g) For the purpose of determining gasoline throughput, as used in the definition of bulk gasoline plant and bulk gasoline terminal, the 20,000 gallons per day threshold throughput is the maximum calculated design throughout for any day, and is not an average. An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gallons per day design capacity throughput threshold to determine whether the facility is a bulk gasoline plant or a bulk gasoline terminal.

(h) Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart.

(i) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status required under § 63.11093. You also must demonstrate in your Notification of Compliance Status that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions; noncompliance with this rule is not excused if it is later determined that your determination was in error, and, as a result, you are violating this subpart. Compliance with this rule is your responsibility, and the Notification of Compliance Status does not alter or affect that responsibility.

(j) For new or reconstructed affected sources, as specified in § 63.11082(b) and (c), recordkeeping to document applicable throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11082(d), recordkeeping to document applicable throughput must begin on January 10, 2008. Records required under this paragraph shall be kept for a period of 5 years.

■ 6. Section 63.11083 is amended by revising paragraph (c) to read as follows:

§ 63.11083 When do I have to comply with this subpart?

* * * * *

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the daily throughput, as specified in option 1 of Table 2 to this subpart, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

■ 7. A new § 63.11085 is added following the **Emission Limitations and Management Practices** heading to read as follows:

§ 63.11085 What are my general duties to minimize emissions?

Each owner or operator of an affected source under this subpart must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must, at all times, operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(b) You must keep applicable records and submit reports as specified in § 63.11094(g) and § 63.11095(d).

■ 8. Section 63.11086 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?

* * * * *

(a) Except as specified in paragraph (b) of this section, you must only load gasoline into storage tanks and cargo tanks at your facility by utilizing submerged filling, as defined in § 63.11100, and as specified in paragraphs (a)(1), (a)(2), or (a)(3) of this section. The applicable distances in paragraphs (a)(1) and (2) of this section shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (a)(1) or (a)(2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the gasoline storage tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

(b) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the control requirements in paragraph (a) of this section, but must comply only with the requirements in paragraph (d) of this section.

* * * * *

■ 9. Section 63.11092 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b) introductory text;

■ c. Revising paragraph (b)(1) introductory text;

■ d. Revising paragraph (b)(1)(i)(B)(*1*)(*iii*);

■ e. Revising paragraph (b)(1)(i)(B)(*2*)(*ii*);

■ f. Revising paragraph (b)(1)(i)(B)(*2*)(*iii*);

■ g. Revising paragraph (b)(1)(iii)(B)(*1*);

■ h. Revising paragraph (b)(1)(iii)(B)(*2*)(*ii*);

■ i. Revising paragraph (b)(1)(iii)(B)(*2*)(*iii*);

■ j. Revising paragraph (f) introductory text; and

■ k. Adding a new paragraph (g) to read as follows:

§ 63.11092 What testing and monitoring requirements must I meet?

(a) Each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of Table 2 to this subpart must comply with the requirements in paragraphs (a) through (d) of this section.

* * * * *

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor

systems, as specified in paragraphs (b)(1) through (5) of this section. For each facility conducting a performance test under paragraph (a)(1) of this section, and for each facility utilizing the provisions of paragraphs (a)(2) or (a)(3) of this section, the CMS must be installed by January 10, 2011.

(1) For each performance test conducted under paragraph (a)(1) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor processing system using the procedures specified in paragraphs (b)(1)(i) through (iv) of this section. During the performance test, continuously record the operating parameter as specified under paragraphs (b)(1)(i) through (iv) of this section.

(i) * * *

(B) * * *

(*1*) * * *

(*iii*) Conduct monthly measurements of the carbon bed outlet volatile organic compounds (VOC) concentration over the last 5 minutes of an adsorption cycle for each carbon bed, documenting the highest measured VOC concentration. Measurements shall be made using a portable analyzer, or a permanently mounted analyzer, in accordance with 40 CFR part 60, Appendix A–7, EPA Method 21 for open-ended lines.

(*2*) * * *

(*ii*) The owner or operator shall verify, during each day of operation of the loading rack, the proper valve sequencing, cycle time, gasoline flow, purge air flow, and operating temperatures. Verification shall be through visual observation, or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(*iii*) The owner or operator shall perform semi-annual preventive maintenance inspections of the carbon adsorption system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

* * * * *

(iii) * * *

(B) * * *

(*1*) The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light, to indicate the presence of a flame. The heat-sensing device shall send a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off.

* * * * *

(*2*) * * *

(*ii*) The owner or operator shall verify, during each day of operation of the loading rack, the proper operation of the assist-air blower and the vapor line valve. Verification shall be through visual observation, or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(*iii*) The owner or operator shall perform semi-annual preventive maintenance inspections of the thermal oxidation system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

* * * * *

(f) The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section. Affected facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with paragraphs (f)(1) and (2) of this section.

* * * * *

(g) *Conduct of performance tests.* Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator, based on representative performance (*i.e.,* performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

■ 10. Section 63.11094 is amended by adding a new paragraph (g) to read as follows:

§ 63.11094 What are my recordkeeping requirements?

* * * * *

(g) Each owner or operator of an affected source under this subpart shall keep records as specified in paragraphs (g)(1) and (2) of this section.

(1) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11085(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 11. Section 63.11095 is amended by adding a new paragraph (a)(4) and a new paragraph (d) to read as follows:

§ 63.11095 What are my reporting requirements?

(a) * * *

(4) For storage vessels complying with § 63.11087(b) after January 10, 2011, the storage vessel's Notice of Compliance Status information can be included in the next semi-annual compliance report in lieu of filing a separate Notification of Compliance Status report under § 63.11093.

* * * * *

(d) Each owner or operator of an affected source under this subpart shall submit a semiannual report including the number, duration, and a brief description of each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.11085(a), including actions taken to correct a malfunction. The report may be submitted as a part of the semiannual compliance report, if one is required. Owners or operators of affected bulk plants and pipeline pumping stations are not required to submit reports for periods during which no malfunctions occurred.

■ 12. Section 63.11100 is amended by:

■ a. Adding, in alphabetical order, new definitions of "gasoline," "gasoline storage tank or vessel," and "surge control tank or vessel"; and

■ b. Revising the definitions of "bulk gasoline plant," "pipeline pumping station," and "vapor-tight gasoline cargo tank" to read as follows:

§ 63.11100 What definitions apply to this subpart?

* * * * *

Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank, and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local

law, and discoverable by the Administrator and any other person.

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as a fuel for internal combustion engines.

* * * * *

Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors;

(2) Subsurface caverns or porous rock reservoirs;

(3) Oil/water separators and sumps, including butane blending sample recovery tanks, used to collect drained material such that it can be pumped to storage or back into a process; or

(4) Tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships.

* * * * *

Pipeline pumping station means a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline, and not containing gasoline storage tanks other than surge control tanks.

* * * * *

Surge control tank or vessel means, for the purposes of this subpart, those tanks or vessels used only for controlling pressure in a pipeline system during surges or other variations from normal operations.

* * * * *

Vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f).

■ 13. Table 1 to Subpart BBBBBB of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR STORAGE TANKS

If you own or operate . . .	Then you must . . .
1. A gasoline storage tank meeting either of the following conditions: (i) a capacity of less than 75 cubic meters (m^3); or (ii) a capacity of less than 151 m^3 and a gasoline throughput of 480 gallons per day or less. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	Equip each gasoline storage tank with a fixed roof that is mounted to the storage tank in a stationary manner, and maintain all openings in a closed position at all times when not in use.
2. A gasoline storage tank with a capacity of greater than or equal to 75 m^3 and not meeting any of the criteria specified in item 1 of this Table.	Do the following: (a) Reduce emissions of total organic HAP or TOC by 95 weight-percent with a closed vent system and control device, as specified in § 60.112b(a)(3) of this chapter; or (b) Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the secondary seal requirements under § 60.112b(a)(1)(ii)(B) and the requirements in § 60.112b(a)(1)(iv) through (ix) of this chapter; and (c) Equip each external floating roof gasoline storage tank according to the requirements in § 60.112b(a)(2) of this chapter, except that the requirements of § 60.112b(a)(2)(ii) of this chapter shall only be required if such storage tank does not currently meet the requirements of § 60.112b(a)(2)(i) of this chapter; or (d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in § 63.1063(a)(1) and (b), except for the secondary seal requirements under § 63.1063(a)(1)(i)(C) and (D), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1).
3. A surge control tank	Equip each tank with a fixed roof that is mounted to the tank in a stationary manner and with a pressure/vacuum vent with a positive cracking pressure of no less than 0.50 inches of water. Maintain all openings in a closed position at all times when not in use.

■ 14. Table 2 to Subpart BBBBBB of Part 63 is revised to read as follows:

TABLE 2 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS

If you own or operate . . .	Then you must . . .
1. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of 250,000 gallons per day, or greater. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Equip your loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; and (b) Reduce emissions of TOC to less than or equal to 80 mg/l of gasoline loaded into gasoline cargo tanks at the loading rack; and (c) Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack or lane from passing through another loading rack or lane to the atmosphere; and (d) Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in § 60.502(e) through (j) of this chapter. For the purposes of this section, the term "tank truck" as used in § 60.502(e) through (j) of this chapter means "cargo tank" as defined in § 63.11100.
2. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of less than 250,000 gallons per day. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Use submerged filling with a submerged fill pipe that is no more than 6 inches from the bottom of the cargo tank; and (b) Make records available within 24 hours of a request by the Administrator to document your gasoline throughput.

■ 15. Table 3 to Subpart BBBBBB of Part 63 is amended by:
■ a. Removing entry 63.6(e)(1);
■ b. Adding entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);
■ c. Revising entry 63.7(e)(1);
■ d. Revising entry 63.7(e)(3);
■ e. Removing entry 63.8(c)(1)(i)–(iii);
■ f. Adding entries 63.8(c)(1)(i), (c)(1)(ii) and 63.8(c)(1)(iii);
■ g. Revising entry 63.9(h)(1)-(6);
■ h. Removing entry 63.10(b)(2)(i)–(iv);
■ i. Adding entries 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v); and
■ j. Revising entry 63.10(d)(5) to read as follows:

TABLE 3 TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBBBB
*	*	*	*
63.6(e)(1)(i)	General duty to minimize emissions.	Operate to minimize emissions at all times; information Administrator will use to determine if operation and maintenance requirements were met.	No. *See* § 63.11085 for general duty requirement.
63.6(e)(1)(ii)	Requirement to correct malfunctions as soon as possible.	Owner or operator must correct malfunctions as soon as possible.	No.
*	*	*	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11092(g) specifies conditions for conducting performance tests.
*	*	*	*
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes, except for testing conducted under § 63.11092(a).
*	*	*	*
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain and operate each CMS as specified in § 63.6(e)(1).	No.
§ 63.8(c)(1)(ii)	Operation and Maintenance of CMS.	Must keep parts for routine repairs readily available.	Yes.
§ 63.8(c)(1)(iii)	Operation and Maintenance of CMS.	Requirement to develop SSM Plan for CMS	No.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, except as specified in § 63.11095(a)(4); also, there are no opacity standards.
*	*	*	*
§ 63.10(b)(2)(i)	Records related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.

TABLE 3 TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.10(b)(2)(ii)	Records related to SSM	Recordkeeping of malfunctions	No. *See* § 63.11094(g) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance records	Recordkeeping of maintenance on air pollution control and monitoring equipment.	Yes.
§ 63.10(b)(2)(iv)	Records Related to SSM	Actions taken to minimize emissions during SSM.	No.
§ 63.10(b)(2)(v)	Records Related to SSM	Actions taken to minimize emissions during SSM.	No.
*	*	*	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. *See* § 63.11095(d) for malfunction reporting requirements.
*	*	*	*

Subpart CCCCCC—[AMENDED]

■ 16. Section 63.11111 is amended by:

■ a. Revising paragraph (e);

■ b. Revising paragraph (g); and

■ c. Adding new paragraphs (h) through (k) to read as follows:

§ 63.11111 Am I subject to the requirements in this subpart?

* * * * *

(e) An affected source shall, upon request by the Administrator, demonstrate that their monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable. For new or reconstructed affected sources, as specified in § 63.11112(b) and (c), recordkeeping to document monthly throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11112(d), recordkeeping to document monthly throughput must begin on January 10, 2008. For existing sources that are subject to this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, recordkeeping to document monthly throughput must begin on January 24, 2011. Records required under this paragraph shall be kept for a period of 5 years.

* * * * *

(g) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart.

(h) Monthly throughput is the total volume of gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source.

(i) If your affected source's throughput ever exceeds an applicable throughput threshold, the affected source will remain subject to the requirements for sources above the threshold, even if the affected source throughput later falls below the applicable throughput threshold.

(j) The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is only subject to § 63.11116 of this subpart.

(k) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status required under § 63.11124. You also must demonstrate in your Notification of Compliance Status that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions, and noncompliance with this rule is not excused if it is later determined that your determination was in error, and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the Notification of Compliance Status does not alter or affect that responsibility.

■ 17. Section 63.11113 is amended by revising paragraph (c) and adding new paragraphs (e) and (f) to read as follows:

§ 63.11113 When do I have to comply with this subpart?

* * * * *

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the monthly throughput, as specified in § 63.11111(c) or § 63.11111(d), you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

* * * * *

(e) The initial compliance demonstration test required under § 63.11120(a)(1) and (2) must be conducted as specified in paragraphs (e)(1) and (2) of this section.

(1) If you have a new or reconstructed affected source, you must conduct the initial compliance test upon installation of the complete vapor balance system.

(2) If you have an existing affected source, you must conduct the initial compliance test as specified in paragraphs (e)(2)(i) or (e)(2)(ii) of this section.

(i) For vapor balance systems installed on or before December 15, 2009, you must test no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section.

(ii) For vapor balance systems installed after December 15, 2009, you must test upon installation of the complete vapor balance system.

(f) If your GDF is subject to the control requirements in this subpart only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must comply with the standards in this subpart as specified in paragraphs (f)(1) or (f)(2) of this section.

(1) If your GDF is an existing facility, you must comply by January 24, 2014.

(2) If your GDF is a new or reconstructed facility, you must comply

by the dates specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) If you start up your GDF after December 15, 2009, but before January 24, 2011, you must comply no later than January 24, 2011.

(ii) If you start up your GDF after January 24, 2011, you must comply upon startup of your GDF.

■ 18. A new § 63.11115 is added following the **Emission Limitations and Management Practices** heading to read as follows:

§ 63.11115 What are my general duties to minimize emissions?

Each owner or operator of an affected source under this subpart must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must, at all times, operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(b) You must keep applicable records and submit reports as specified in § 63.11125(d) and § 63.11126(b).

■ 19. Section 63.11116 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 63.11116 Requirements for facilities with monthly throughput of less than 10,000 gallons of gasoline.

* * * * *

(b) You are not required to submit notifications or reports as specified in § 63.11125, § 63.11126, or subpart A of this part, but you must have records available within 24 hours of a request by the Administrator to document your gasoline throughput.

* * * * *

(d) Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with paragraph (a)(3) of this section.

■ 20. Section 63.11117 is amended by revising paragraph (b) to read as follows:

§ 63.11117 Requirements for facilities with monthly throughput of 10,000 gallons of gasoline or more.

* * * * *

(b) Except as specified in paragraph (c) of this section, you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in § 63.11132, and as specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section. The applicable distances in paragraphs (b)(1) and (2) shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (b)(1) or (b)(2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

* * * * *

■ 21. Section 63.11120 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(2) introductory text;

■ c. Adding paragraph (a)(2)(iii);

■ d. Adding paragraph (c); and

■ e. Adding paragraph (d) to read as follows:

§ 63.11120 What testing and monitoring requirements must I meet?

(a) Each owner or operator, at the time of installation, as specified in § 63.11113(e), of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.

* * * * *

(2) You must demonstrate compliance with the static pressure performance requirement specified in item 1(h) of Table 1 to this subpart for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test methods identified in paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

* * * * *

(iii) Bay Area Air Quality Management District Source Test Procedure ST–30—Static Pressure Integrity Test—Underground Storage Tanks, adopted November 30, 1983, and amended December 21, 1994 (incorporated by reference, *see* § 63.14).

* * * * *

(c) Conduct of performance tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (*i.e.,* performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(d) Owners and operators of gasoline cargo tanks subject to the provisions of Table 2 to this subpart must conduct annual certification testing according to the vapor tightness testing requirements found in § 63.11092(f).

■ 22. Section 63.11124 is amended by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Revising the first two sentences in paragraph (a)(2);

■ c. Revising paragraph (b)(1) introductory text; and

■ d. Revising the first two sentences in paragraph (b)(2) to read as follows:

§ 63.11124 What notifications must I submit and when?

(a) * * *

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11117, unless you meet the requirements in paragraph (a)(3) of this section. If your affected source is subject to the control requirements in § 63.11117 only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must submit the Initial Notification by May 24, 2011. The Initial Notification must contain the information specified in paragraphs (a)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and delegated State authority as specified in § 63.13.

* * * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, within 60 days of the applicable compliance date specified in § 63.11113, unless you meet the requirements in paragraph (a)(3) of this section. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facilities' monthly throughput is calculated based on the volume of gasoline loaded into

all storage tanks or on the volume of gasoline dispensed from all storage tanks.* * *

* * * * *

(b) * * *

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11118. If your affected source is subject to the control requirements in § 63.11118 only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must submit the Initial Notification by May 24, 2011. The Initial Notification must contain the information specified in paragraphs (b)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and delegated State authority as specified in § 63.13.

* * * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h). The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facility's throughput is determined based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks. * * *

* * * * *

■ 23. Section 63.11125 is amended by adding a new paragraph (c) and a new paragraph (d) to read as follows:

§ 63.11125 What are my recordkeeping requirements?

* * * * *

(c) Each owner or operator of a gasoline cargo tank subject to the management practices in Table 2 to this subpart must keep records documenting vapor tightness testing for a period of 5 years. Documentation must include each of the items specified in § 63.11094(b)(2)(i) through (viii). Records of vapor tightness testing must be retained as specified in either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) The owner or operator must keep all vapor tightness testing records with the cargo tank.

(2) As an alternative to keeping all records with the cargo tank, the owner or operator may comply with the requirements of paragraphs (c)(2)(i) and (ii) of this section.

(i) The owner or operator may keep records of only the most recent vapor tightness test with the cargo tank, and keep records for the previous 4 years at their office or another central location.

(ii) Vapor tightness testing records that are kept at a location other than with the cargo tank must be instantly available (*e.g.,* via e-mail or facsimile) to the Administrator's delegated representative during the course of a site visit or within a mutually agreeable time frame. Such records must be an exact duplicate image of the original paper copy record with certifying signatures.

(d) Each owner or operator of an affected source under this subpart shall keep records as specified in paragraphs (d)(1) and (2) of this section.

(1) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11115(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 24. Section 63.11126 is revised to read as follows:

§ 63.11126 What are my reporting requirements?

(a) Each owner or operator subject to the management practices in § 63.11118 shall report to the Administrator the results of all volumetric efficiency tests required under § 63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

(b) Each owner or operator of an affected source under this subpart shall report, by March 15 of each year, the number, duration, and a brief description of each type of malfunction which occurred during the previous calendar year and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.11115(a), including actions taken to correct a malfunction. No report is necessary for a calendar year in which no malfunctions occurred.

■ 25. Section 63.11132 is amended as follows:

■ a. By adding, in alphabetical order, the definitions of "gasoline," "motor vehicle," "nonroad engine," "nonroad vehicle," and "vapor-tight gasoline cargo tank"; and

■ b. By revising, in alphabetical order, the definitions of "gasoline cargo tank," "gasoline dispensing facility," and "monthly throughput" to read as follows:

§ 63.11132 What definitions apply to this subpart?

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as a fuel for internal combustion engines.

Gasoline cargo tank means a delivery tank truck or railcar which is loading or unloading gasoline, or which has loaded or unloaded gasoline on the immediately previous load.

Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

Motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway.

Nonroad engine means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

Nonroad vehicle means a vehicle that is powered by a nonroad engine, and that is not a motor vehicle or a vehicle used solely for competition.

* * * * *

Vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f) of this part.

■ 26. Table 1 to subpart CCCCCC of part 63 is amended by adding a footnote 1, and by revising entry 2 to read as follows:

TABLE 1 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE [1]

If you own or operate . . .	Then you must . . .
* * * *	* * *
2. A new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118.	Equip your gasoline storage tanks with a dual-point vapor balance system, as defined in § 63.11132, and comply with the requirements of item 1 in this Table.

[1] The management practices specified in this Table are not applicable if you are complying with the requirements in § 63.11118(b)(2), except that if you are complying with the requirements in § 63.11118(b)(2)(i)(B), you must operate using management practices at least as stringent as those listed in this Table.

■ 27. Table 2 to Subpart CCCCCC of Part 63 is amended by revising entry (vi) to read as follows:

TABLE 2 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE CARGO TANKS UNLOADING AT GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE

If you own or operate . . .	Then you must . . .
* * * *	* * *
	(vi) The filling of storage tanks at GDF shall be limited to unloading from vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried with the cargo tank, as specified in § 63.11125(c).

■ 28. Table 3 to Subpart CCCCCC of Part 63 is amended by:

■ a. Revising entry 63.5;

■ b. Removing entry 63.6(e)(1);

■ c. Adding entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);

■ d. Revising entry 63.7(e)(1);

■ e. Revising entry 63.8(c)(1)(i)–(iii);

■ f. Revising entry 63.8(c)(2)–(8);

■ g. Removing entry 63.10(b)(2)(i)–(iv);

■ h. Adding entries 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v);

■ i. Revising entry 63.10(d)(5);

■ j. Revising entry 63.10(e)(3)(i)–(iii); and

■ k. Revising entry 63.10(e)(3)(iv)–(v) to read as follows:

TABLE 3 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart CCCCCC
* * *	* * *	* * *	*
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes, except that these notifications are not required for facilities subject to § 63.11116.
* * *	* * *	* * *	*
63.6(e)(1)(i)	General duty to minimize emissions.	Operate to minimize emissions at all times; information Administrator will use to determine if operation and maintenance requirements were met.	No. *See* § 63.11115 for general duty requirement.
63.6(e)(1)(ii)	Requirement to correct malfunctions ASAP.	Owner or operator must correct malfunctions as soon as possible.	No.
* * *	* * *	* * *	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11120(c) specifies conditions for conducting performance tests.

TABLE 3 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart CCCCCC
*	* *	* * *	*
§ 63.8(c)(1)(i)–(iii)	Operation and Maintenance of Continuous Monitoring Systems (CMS).	Must maintain and operate each CMS as specified in § 63.6(e)(1); must keep parts for routine repairs readily available; must develop a written SSM plan for CMS, as specified in § 63.6(e)(3).	No.
§ 63.8(c)(2)–(8)	CMS Requirements	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	No.
*	* *	* * *	*
§ 63.10(b)(2)(i)	Records related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.
§ 63.10(b)(2)(ii)	Records related to SSM	Recordkeeping of malfunctions	No. *See* § 63.11125(d) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance records	Recordkeeping of maintenance on air pollution control and monitoring equipment.	Yes.
§ 63.10(b)(2)(iv)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
§ 63.10(b)(2)(v)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
*	* *	* * *	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. *See* § 63.11126(b) for malfunction reporting requirements.
*	* *	* * *	*
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	No.
*	* *	* * *	*

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Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–49; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DOD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–49. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–49 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULE IN FAC 2005–49

Subject	FAR case	Analyst
Public Access to the Federal Awardee Performance and Integrity Information System (Interim)	2010–016	Loeb.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to FAR Case 2010–016.

FAC 2005–49 amends the FAR as specified below:

Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010–016) (Interim)

This interim rule amends the FAR to implement section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010. Section 3010 requires that the Administrator of the General Services post all information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, on a publicly available Web site.

This interim rule notifies contractors that FAPIIS data, excluding past performance reviews, will be available to the public after a certain date, and creates a new FAR clause to support the posting of information in FAPIIS. Contracting officers are encouraged to the extent feasible to amend existing solicitations in accordance with FAR 1.108(d), in order to include this revised clause in contracts to be awarded on or after the effective date of this rule.

Dated: January 19, 2011.

Michael O. Jackson,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–1324 Filed 1–21–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, and 52

[FAC 2005–49; FAR Case 2010–016; Docket 2010–0016, Sequence 1]

RIN 9000–AL94

Federal Acquisition Regulation; Public Access to the Federal Awardee Performance and Integrity Information System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 3010 of Supplemental Appropriations Act, 2010. Section 3010 requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, shall be made publicly available. This interim rule notifies contractors of this new statutory requirement for public access to FAPIIS and creates a new FAR clause to support the posting of information in FAPIIS consistent with section 3010. All information posted in FAPIIS on or after April 15, 2011, except for past performance reviews, will be publicly available.

DATES: *Effective Date:* January 24, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before March 25, 2011 to be considered in the formulation of a final rule.

Applicability Date: This rule applies to solicitations issued on or after January 24, 2011. Contracting officers are encouraged, to the extent feasible, to amend existing solicitations in accordance with FAR 1.108(d), in order to include the clause at FAR 52.209–9 in contracts to be awarded on or after January 24, 2011. Prior to April 15, 2011, contracting officers shall bilaterally modify existing contracts, including indefinite-delivery indefinite-quantity contracts, that contain the clause 52.209–8, Updates of Information Regarding Responsibility Matters, if a six-month update will be due on or after April 15, 2011. The modification shall replace the clause 52.209–8 with a new clause 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, Alternate I (JAN 2011). If the contracting officer is unable to negotiate this modification prior to April 15, 2011, the contracting officer shall obtain approval at least one level above the contracting officer to negotiate an alternate resolution.

ADDRESSES: Submit comments identified by FAC 2005–49, FAR Case 2010–016, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–016" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds

with "FAR Case 2010–016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–016" on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–49, FAR Case 2010–016, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–49, FAR Case 2010–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a final rule in the **Federal Register** at 75 FR 14059 on March 23, 2010, FAR Case 2008–027, Federal Awardee Performance and Integrity Information System, to implement the requirements of FAPIIS. This rule became effective on April 22, 2010. That rulemaking and the associated launch of FAPIIS in April 2010 are part of an ongoing effort by the Administration to enhance the Government's ability to evaluate the business ethics and quality of prospective contractors competing for Federal contracts. That rulemaking also addresses requirements set forth in section 872 of the Clean Contracting Act of 2008 (subtitle G of title VIII of Pub. L. 110–417) (41 U.S.C. 417b) for a system containing specific information on the integrity and performance of covered Federal agency contractors. Additional information on FAR Case 2008–027 may be found in the **Federal Register** at 75 FR 14059, March 23, 2010.

With respect to the availability of information in FAPIIS, section 872(e)(1) states, in pertinent part, that the Administrator of General Services "shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies and to such other government officials as the Administrator determines appropriate." Section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010, modifies section 872(e)(1) to require that the Administrator of General Services post all FAPIIS information, excluding past performance reviews, on a publicly available Web site. FAPIIS will now become the publicly available Web site.

To comply with section 3010, this preamble contains instructions to contracting officers on modifying existing contracts to incorporate the new clause. To begin the transition process and lessen the number of contracts that will require modification when the interim rule is published, the Department of Defense's Director of Defense Procurement and Acquisition Policy issued a Class Deviation for the Department on October 12, 2010 (*see http://www.acq.osd.mil/dpap/policy/policyvault/USA005830-10-DPAP.pdf*). On October 14, 2010, the Civilian Agency Acquisition Council (CAAC) Chair issued a Consultation for Class Deviation letter recommending that civilian agencies authorize a class deviation (*see https://www.acquisition.gov/comp/caac/caacletters/CAAC-Letter-2011-01.pdf*). Both the DoD deviation and the CAAC letter provide a contract clause that complies with section 3010 and was expected to be included in the interim rule. Agencies were encouraged to take advantage of the deviations until this FAPIIS interim rule became effective. To implement section 3010, the following steps have been, or are being taken:

1. *Enhanced FAPIIS functionality.* The Managers of the FAPIIS system, in consultation with the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils), are making changes to the FAPIIS architecture to support the transparency requirements of section 3010. The current architecture, consistent with the rule effective on April 22, 2010, provides a one-stop information system to help acquisition officials make informed decisions about an offeror's business integrity, but lacks the functionality to make information immediately available to the public as it is posted in the system. On and after April 15, 2011, when system changes are completed, information posted to FAPIIS by offerors, contractors, and Government personnel will be publicly available in accordance with section 3010.

2. *New FAR clause.* The Councils have developed a new FAR clause 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, to replace the current FAR clause 52.209–8, Updates of Information Regarding Responsibility Matters. The current clause states that only Government personnel and authorized users performing business on behalf of the Government will have access to a contractor's record in the FAPIIS system. The new clause does not include this statement but instead provides notice to contractors that all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. The new clause also states that requests to review the information posted in FAPIIS before April 15, 2011, will be subject to the Freedom of Information Act (FOIA) process.

The new FAR clause will be implemented in the following manner:

a. *New contracts.* On or after the effective date of this interim rule, contracting officers will be required to insert the FAR clause 52.209–9, in accordance with the prescription at FAR 9.104–7(c), in solicitations issued on or after the date of this rule and resultant contracts. As explained immediately above in paragraph 2. of this Background, information posted under the new clause on or after April 15, 2011, except for past performance reviews, will be released to the public. Information posted before April 15, 2011, will continue to be handled under FOIA. However, the clause at FAR 52.209–9, Alternate I, requires this information to be reposted if a six-month update will be due on or after April 15, 2011. The reposted information will be made available to the public.

b. *Existing contracts.* Prior to April 15, 2011, contracting officers will be required to bilaterally modify existing contracts (including indefinite-delivery indefinite-quantity contracts) that contain the FAR clause 52.209–8, if a six-month update will be due on or after April 15, 2011. The modification shall replace the FAR clause 52.209–8 with the new FAR clause 52.209–9. If the contracting officer is unable to negotiate this modification prior to April 15, 2011, the contracting officer will be required to obtain approval at least one level above the contracting officer to negotiate an alternate resolution.

3. *FAPIIS and CCR Notice.* A notice has been posted on the FAPIIS Web site, available at *http://www.cpars.csd.disa.mil/FAPIISmain.htm,* as well as on the Central Contractor Registration at *http://www.ccr.gov* through which offerors submit certain information to FAPIIS to alert offerors, contractors, and Government officials to the requirements of section 3010 and the actions they need to take in

implementing this law. For contracting officers, this includes taking appropriate steps to ensure that they do not post information in the system on or after April 15, 2011, that would create a harm protected by a disclosure exemption under FOIA. For example, heightened attention might need to be given to whether documentation supporting a non-responsibility determination or termination for default decision should be redacted before the determination or decision is posted.

The Federal Acquisition Regulatory Council (OFPP, DoD, GSA, and NASA) are continuing to consider the need for additional regulatory or other guidance to address the implementation of section 3010 and welcome public comment on this issue.

Finally, this rule makes several conforming changes and technical corrections:

- FAR 9.104–7 and 12.301—Modifies the clause prescriptions to prescribe the new clause.
- FAR 52.209–7—Relocates the definition of "Principal", in alphabetical order, in paragraph (a) of the clause.

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule just notifies the contractors that the public will have access to the database. The rule does not impose any new burdens on small entities but just makes editorial changes to 52.209–7 and transfers the information collection requirement of 52.209–8 to new clause 52.209–9.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–49, FAR Case 2010–016), in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The existing burden hours for the information collection requirements that will now be in 52.209–7 and 52.209–9 were initially approved under OMB clearance 9000–0174 with regard to FAR Case 2008–027, with a reference only to 52.209–7, because initially all burdens were included in that provision. However, in the final rule under FAR Case 2008–027, the ongoing portion of the reporting to FAPIIS was separated out of the FAR provision 52.209–7 and incorporated into FAR clause 52.209–8. This transfer did not change the number of approved hours. In this case, the burden for 52.209–8 is transferred to 52.209–9, again without any change to the burden hours initially approved under OMB clearance 9000–0174.

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), which was signed on July 29, 2010, and was effective upon enactment. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 9, 12, and 52

Government procurement.

Dated: January 19, 2011.

Michael O. Jackson,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 9, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment "52.209–7" and its corresponding OMB Control Number "9000–0174", and FAR segment "52.209–9" and its corresponding OMB Control Number "9000–0174".

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.104–7 by revising paragraph (c) to read as follows:

9.104–7 Solicitation provisions and contract clauses.

* * * * *

(c)(1) The contracting officer shall insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters—

(i) In solicitations where the resultant contract value is expected to exceed $500,000; and

(ii) In contracts in which the offeror checked "has" in paragraph (b) of the provision 52.209–7.

(2) For solicitations issued prior to April 15, 2011, and resultant contracts, use the clause with its Alternate I.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by revising paragraph (d)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(4)(i) Insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, as prescribed in 9.104–7(c).

(ii) Use the clause with its Alternate I as prescribed in 9.104–7(c)(2).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.209–7 by—

■ a. Revising the date of the provision;

■ b. Adding to paragraph (a), in alphabetical order, the definition "Principal";

■ c. Removing from paragraph (d) the word "enter" and adding the word "post" in its place; and

■ d. Removing the undesignated paragraph that follows paragraph (d).

The revised and added text reads as follows:

52.209–7 Information Regarding Responsibility Matters.

* * * * *

Information Regarding Responsibility Matters (JAN 2011)

(a) * * *

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

* * * * *

52.209–8 [Removed and reserved]

■ 6. Remove and reserve section 52.209–8.

■ 7. Add section 52.209–9 to read as follows:

52.209–9 Updates of Publicly Available Information Regarding Responsibility Matters.

As prescribed at 9.104–7(c), insert the following clause:

Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2011)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at *http://www.ccr.gov.*

(b)(1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.,* for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3)(i) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(ii) As required by section 3010 of Public Law 111–212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(End of clause)

Alternate I (JAN 2011). As prescribed in 9.104–7(c)(2), redesignate paragraph (a) of the basic clause as paragraph (a)(1) and add the following paragraph (a)(2):

(2) At the first semi-annual update on or after April 15, 2011, the Contractor shall post again any required information that the Contractor posted prior to April 15, 2011.

[FR Doc. 2011–1323 Filed 1–21–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–49; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–49, which amend the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2005–49, which precedes this document. The documents are also available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–49 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULE IN FAC 2005–49

Subject	FAR case	Analyst
Public Access to the Federal Awardee Performance and Integrity Information System (Interim)	2010–016	Loeb.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to FAR Case 2010–016.

FAC 2005–49 amends the FAR as specified below:

Public Access to the Federal Awardee Performance and Integrity Information System (FAR Case 2010–016) (Interim)

This interim rule amends the FAR to implement section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted July 29, 2010. Section 3010 requires that the Administrator of the General Services post all information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), excluding past performance reviews, on a publicly available Web site.

This interim rule notifies contractors that FAPIIS data, excluding past performance reviews, will be available to the public after a certain date, and creates a new FAR clause to support the posting of information in FAPIIS. Contracting officers are encouraged to the extent feasible to amend existing solicitations in accordance with FAR 1.108(d), in order to include this revised clause in contracts to be awarded on or after the effective date of this rule.

Dated: January 19, 2011.

Michael O. Jackson,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–1322 Filed 1–21–11; 8:45 am]

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FEDERAL REGISTER

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Part IV

Department of Housing and Urban Development

24 CFR Parts 5, 200, 203, et al.
Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 203, 236, 570, 574, and 982

[Docket No. FR 5359–P–01]

RIN 2501–AD49

Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: As the Nation's housing agency, HUD administers programs designed to meet the goal of ensuring decent housing and suitable living environment for all. In pursuit of this goal, it is HUD's responsibility to ensure that all who are otherwise eligible to participate in HUD's programs have equal access to these programs and have the opportunity to compete fairly for HUD funds without being subject to arbitrary exclusion.

There is evidence, however, that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from some housing opportunities in the private sector. Through this proposed rule, HUD strives to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation or gender identity.

DATES: *Comment Due Date:* March 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. There are two methods for submitting public comments. All submissions and other communications must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5206, Washington, DC 20410–8000; telephone number 202–708–2333 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Like all Federal agencies, HUD is charged with ensuring equal access to Federal programs that it administers. HUD also has a unique charge, as the Nation's housing agency, to promote the Federal goal of providing decent housing and a suitable living environment for all.[1] Accordingly, HUD has a responsibility to ensure equal access to its core rental assistance and homeownership programs for all eligible individuals and families. HUD fulfills this responsibility by taking such actions as necessary so that all who are otherwise eligible to participate in HUD programs will not be excluded based on criteria that are irrelevant to the purpose of HUD's programs, such as sexual orientation or gender identity.

There is evidence suggesting that LGBT individuals and families do not have equal access to housing. For example, a 2007 study of housing discrimination based on sexual orientation conducted by Michigan fair housing centers found disparate treatment in 32 out of 120 fair housing tests it conducted. Testers posing as gay or lesbian home seekers received unfavorable treatment on issues such as whether housing was available, the amount of rent, application fees, and levels of encouragement as compared to testers posing as heterosexual home seekers. The gay and lesbian testers also were subjected to offensive comments. *See* Michigan Fair Housing Center's Report on "Sexual Orientation and Housing Discrimination in Michigan" January 2007 at *http://www.fhcmichigan.org/images/Arcus_web1.pdf.*

A recent survey of more than 6,000 transgender persons conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force (Task Force) indicated significant levels of housing instability for transgender people. Twenty-six percent of respondents reported having to find different places to sleep for short periods of time due to bias. Eleven percent of respondents reported having been evicted due to bias, and 19 percent reported becoming homeless due to bias. *See* November 2009, "Preliminary Findings, National Transgender Discrimination Survey," at *http://www.thetaskforce.org/reports_and_research/trans_survey_preliminary_findings.*

In light of the increasing awareness of housing discrimination against LGBT persons, a growing number of States, counties, and cities are enacting laws that prohibit discrimination in housing on the basis of sexual orientation or gender identity. Twenty States, the District of Columbia, and over 200 localities have enacted such laws.[2] The legislative records of some of these enactments are a source of further evidence of housing discrimination

[1] This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

[2] *See, e.g.,* Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity (Institute of Real Estate Management (IREM) Legislative Staff July 2007, which is available at *http://www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf*); *see also http://www.hrc.org/issues/5499.htm.*

based on sexual orientation or gender identity. For example, in a State legislative hearing on a proposed amendment to the North Dakota fair housing law that would add sexual orientation to the list of protected characteristics, a woman recounted how she and her partner were evicted once the landlord learned her partner was not a man. *See* "Gay-rights Advocates Press for Change in N.D. Law," February 4, 2009, Bismarck Tribune, at *http://www.bismarcktribune.com/news/state-and-regional/article_fb795f86-fc42-5184-b6d6-ad424e3243ce.html.*

The U.S. Congress has acted to protect the rights of LGBT individuals to be free from bias-motivated crime. In October 2009, Federal legislation was enacted adding certain crimes motivated by a victim's actual or perceived sexual orientation or gender identity to the list of hate crimes covered by existing Federal law. *See* Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Division E of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, approved October 28, 2009). In support of this enactment, Congress found that violence motivated by the actual or perceived sexual orientation or gender identity of the victim "poses a serious national problem" because, among other things, it "devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected." (*See* Pub. L. 111–84, Division E, Sec. 4702(1), (5).)

In considering the mounting evidence of violence and discrimination against LGBT persons, the Department is concerned that its own programs may not be fully open to LGBT individuals and families. Accordingly, consistent with steps being taken at all levels of government to protect LGBT persons from discrimination, HUD is initiating this rulemaking in an effort to ensure that its rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation or gender identity.

II. This Proposed Rule

A. Defining Sexual Orientation and Gender Identity

The proposed rule would amend 24 CFR 5.100, which contains definitions generally applicable to HUD programs, to include definitions of "sexual orientation" and "gender identity." Section 5.100 would define "sexual orientation" as "homosexuality, heterosexuality, or bisexuality." This is the definition that the Office of Personnel Management (OPM) uses in the context of the Federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights." (*See http://www.opm.gov/er/address.pdf* at page 4.) The rule would define "gender identity," consistent with the definition of "gender identity" in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)), as "actual or perceived gender-related characteristics."

B. Prohibiting Inquiries Regarding Sexual Orientation or Gender Identity

To further ensure equal access to HUD's housing and housing-related service programs without regard to sexual orientation or gender identity, HUD is proposing to prohibit inquiries regarding sexual orientation or gender identity. This prohibition would preclude owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. While the rule prohibits inquiries regarding sexual orientation or gender identity, nothing in the rule prohibits any individual from voluntarily self-identifying his or her sexual orientation or gender identity. Additionally, this rule is not intended to prohibit otherwise lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Through this rulemaking, HUD is proposing to institute this policy in its rental assistance and homeownership programs, which include HUD's Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.[3] This prohibition on inquiries regarding sexual orientation or gender identity would be provided in a new paragraph (a)(2) added to 24 CFR 5.105. Section 5.105 of HUD's regulations is entitled "Other Federal Requirements." The proposed rule would divide the existing paragraph (a) into two new subparagraphs. The text in the current paragraph (a) would become subparagraph (a)(1), but retain the heading and content as currently found in § 5.105(a). A new subparagraph (a)(2) would be added, entitled "Prohibition on inquiries regarding sexual orientation or gender identity." The regulations for the HUD programs to which the prohibition on such inquiries apply already include cross-reference to § 5.105, and with the amendment to this section, the cross-reference would now include the prohibition in § 5.105(a).

This policy prohibiting inquiries regarding sexual orientation or gender identity is undertaken pursuant to HUD's general rulemaking authority granted by section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and HUD's specific rulemaking authority to establish eligibility criteria for participation in HUD programs granted by the statutes that establish the various HUD programs.

C. Prohibiting Sexual Orientation and Gender Identity as Grounds for Decisionmaking in Federal Housing Administration (FHA) Programs

Section 203.33(b) of HUD's FHA regulations (24 CFR 203.33(b)) provides that a mortgagee's determination of the adequacy of a single-family mortgagor's income "shall be made in a uniform manner without regard to" specified prohibited grounds. The proposed rule would add actual or perceived sexual orientation and gender identity to the prohibited grounds enumerated in 24 CFR 203.33(b) to ensure FHA-insured lenders do not deny or otherwise alter the terms of mortgages on the basis of criteria that are irrelevant to the purpose of obtaining FHA-mortgage insurance.

D. Eligible Families in HUD Programs

For the following HUD regulations specified below, this proposed rule clarifies that all otherwise eligible families, regardless of marital status, sexual orientation, or gender identity, have the opportunity to participate in HUD programs. The majority of HUD's rental housing and homeownership programs already interpret "family" broadly. Family includes a single person and families with or without children, just to cite two examples. This proposed rule clarifies that families who are otherwise eligible for HUD programs may not be excluded because one or more members of the family may be an LGBT individual or have an LGBT relationship or be perceived to be such an individual or in such relationship.

This section lists the HUD programs for which this proposed rule clarifies and confirms the broad meaning of family.

1. *Section 8 Tenant-Based Assistance (Housing Choice Voucher Program) and Public Housing Programs (24 CFR part 5 and 24 CFR part 982).* The proposed rule would amend the regulations in 24

[3] Institution of this policy in HUD's Native American programs will be undertaken by separate rulemaking.

CFR 5.403, which contains the definitions applicable to HUD's Housing Choice Voucher (HCV) and public housing programs. The term "family," provided in part 5 for these HUD programs, is based on section 3 of the U.S. Housing Act of 1937 (42 U.S. 1437a) (1937 Act). Section 3(b)(3)(B) of the 1937 Act provides as follows:

> Families.—The term "families" includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.

Section 3(b)(3)(A) of the 1937 Act provides that the term "single person" includes a family that consists of a single person. (*See* Section 3(b)(3)(C) of the 1937 Act.) Section 3(b)(3)(C) provides that the temporary absence of a child from a home due to placement in foster care shall not be considered in determining family composition and family size, meaning that a child, although absent from the home, is still considered a family member. Sections 3(b)(3)(D), (E), (F), and (G) also specify the meaning of the following terms: elderly person, person with disabilities, displaced person, and near-elderly person. All of these statutory terms are currently captured in the term "family" in § 5.403.

These statutory terms result in an expansive view of what can constitute a family, and the 1937 Act provides examples of what the term "families" includes but does not limit the composition of families to the statutory examples. Consistent with the broad meaning given to the term family by the 1937 Act, this proposed rule, clarifies that a family, however composed, is a family regardless of marital status, sexual orientation, or gender. The term "family" in § 5.403 is similar in substance to the term "family composition" in § 982.201, but HUD finds that the statutory terms are more coherently reflected in § 982.201. Therefore, in addressing the term "family" in § 5.403, HUD has structured the organization of this term as found in § 982.201.

This proposed rule also would amend the terms "disabled family," "elderly family," and "near-elderly family" in § 5.403. Each of these terms is stated as a family whose head, spouse, or sole member is, respectively, for each of these terms, a person with disabilities, a person at least 62 years of age, or a person who is at least 50 years of age but below the age of 62. To each of these terms, the proposed rule adds the term "co-head."

"Co-head" is a term that has long been used in supplementary documents to HUD's rental assistance programs. Form HUD–50058 pertaining to the Multifamily Tenant Characteristics System (MTCS) and its accompanying Instruction Booklet use the term "co-head" and provides that "co-head" is an individual in the household who is equally responsible for the lease with the head of household. HUD's Web page devoted to frequently asked questions about general income and rent determination for HUD's rental housing programs provides in the answer to question 38 an example of co-head as follows: "An example of this [co-head] would be an unmarried couple or two persons living together and listed as head and co-head on the lease agreement." (*See http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm*).

The inclusion in the proposed amendment to § 5.403 of "co-head," again a familiar term to housing providers of HUD assistance, would not change the meaning of the statutory term "heads" of household, which is not currently defined in statute or regulation. The inclusion would merely codify HUD's existing interpretation of "heads," which, as noted above, recognizes that some families living in HUD-assisted rental housing have more than one family head. Nor would including the term "co-head" in "disabled family," "elderly family," and "near-elderly family" alter or expand the meaning of "spouse." Consistent with longstanding HUD interpretation, a head and co-head of the family may be a married couple, an unmarried couple, or two adults living together who are listed as head and co-head on the lease agreement.

The proposed rule would add "family," as provided in 24 CFR 5.403, to the list of general definitions in § 5.100, and clarify that the term is applicable to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

The proposed rule also would add to 24 CFR 982.4 and § 982.201 a cross-reference to the term "family" in 24 CFR 5.403.

2. *Federal Housing Administration (FHA) Programs (24 CFR Parts 200, 203, 236, and 291).* Basic definitions that are generally applicable to all FHA multifamily programs are found in 24 CFR 200.3. This regulatory section would be amended to cross-reference to "family" in 24 CFR 5.403.

In addition to the proposed amendment to 24 CFR 200.3, HUD proposes to amend 24 CFR 236.1. Section 236.1(a) contains the savings clause of applicable regulations for the mortgages insured under the Rental and Cooperative Housing for Lower Income Families Program, for which new mortgages have not been insured since 1983. Although no new mortgages are insured under this program, authority remains to refinance mortgages insured under section 236 of the National Housing Act (NHA) or to finance, pursuant to section 236(j)(3) of the NHA, the purchase by a cooperative or nonprofit corporation or association of a project assisted under section 236. The proposed amendment would provide that the term "family" in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236 of the NHA, or to financing, pursuant to section 236(j)(3) of the NHA, of the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236.

3. *Community Development Block Grants (CDBG) Programs (24 CFR Part 570).* Section 570.3 of the CDBG regulations (24 CFR part 570, subpart A) provides basic definitions that are applicable to all CDBG programs. The proposed rule would amend 24 CFR 570.3 to cross-reference to the term "family" in 24 CFR 5.403. The proposed rule would revise the term "household" in § 570.3, another term used in CDBG programs, to ensure there is no exclusion of an eligible household on the basis of sexual orientation or gender identity. The revisions to "household" would also remove some redundancy in terminology. The current term "household" provides that occupants of a household may be a single family or one person living alone, but the term "family," as discussed earlier in this preamble, includes a single person. Accordingly, the revisions to "household" are designed to eliminate any conflict between the terms "household" and "family."

4. *Housing Opportunities for Persons With AIDS (HOPWA) (24 CFR Part 574).* The proposed rule would amend 24 CFR 574.3 to cross-reference to "family" in 24 CFR 5.403, and to remove obsolete language that states that for a person to be eligible to live with another person, the other person must be determined to be important to the person's care or well-being.

E. HUD Programs for Which Eligible Family Does Not Require Amendment

The proposed rule does not revise the term "family" in the regulations for the Home Investment Partnership Program, which are codified at 24 CFR part 92. "Family" in § 92.2 already cross-references to the term family in § 5.403. The proposed rule would not amend the part 891 definitions of "household" (§ 891.105), "elderly person" (§ 891.205), or "disabled household" (§ 891.305) governing programs that provide Supportive Housing for the Elderly and Persons with Disabilities. These programs already provide meanings for the term family.

Additionally, the rule does not propose to amend the term "family" in the Project-Based Voucher (PBV) Program regulations, codified at 24 CFR part 983. The PBV regulations, in § 983.4, already cross-reference to the definitions in 24 CFR part 5, subpart D, which includes the § 5.403.

F. Changes to HUD Forms

This rule, as proposed, does not impose any new information collection requirements on participants in the covered HUD programs. Rather than requiring collection of information, the rule prohibits inquiries regarding sexual orientation or gender identity of any individual or family receiving housing assistance or benefitting from mortgage insurance under the covered HUD programs. At the final rule stage, if HUD identifies any forms for which the regulatory citation to the term "family" must be included as a result of promulgation of this rule, HUD will work with the Office of Management and Budget (OMB) to include such term. As noted earlier in this preamble, such inquiry is irrelevant to an individual's or family's eligibility to participate in a HUD-covered program.

III. Solicitation of Comments

The Department welcomes comment on the amendments proposed in this rule, including identification of any program area which may have been inadvertently overlooked and should reference "family" in 24 CFR 5.403. The Department also welcomes any information regarding exclusion or discrimination on the basis of sexual orientation or gender identity in HUD programs. Such information will help the Department in its effort to craft regulations that will effectively ensure access to HUD programs by all eligible persons regardless of sexual orientation or gender identity.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). A determination was made that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to ensure open access to HUD's core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of "family" that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 5, 200, 203, 236, 570, 574, and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. The heading of subpart A is revised to read as follows:

Subpart A—Generally Applicable Definitions and Requirements; Waivers

3. In § 5.100, definitions for "family," "gender identity," and "sexual orientation" are added to read as follows:

§ 5.100 Definitions.

* * * * *

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

* * * * *

Gender identity means actual or perceived gender-related characteristics.

* * * * *

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

* * * * *

4. In § 5.105, the introductory text is revised, paragraph (a) is redesignated as paragraph (a)(1), and a new paragraph (a)(2) is added to read as follows:

§ 5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a)(1) *Nondiscrimination and equal opportunity.* * * *

(2) *Prohibition on inquiries regarding sexual orientation or gender identity.* No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation, or gender identity of an applicant for, or occupant of, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying his or her sexual orientation or gender identity. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

* * * * *

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

5. In § 5.403, the definitions of "Disabled family," "Elderly family," "family," and "Near-elderly family" are revised to read as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

* * * * *

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

7. Section 200.3(a) is revised to read as follows:

§ 200.3 Definitions.

(a) The definitions "Department," "Elderly person," "Family," "HUD," and "Secretary," as used in this subpart A, shall have the meanings given these definitions in 24 CFR part 5.

* * * * *

8. Section 200.300 is revised to read as follows:

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

9. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

10. In § 203.33, paragraph (b) is revised to read as follows:

§ 203.33 Relationship of income to mortgage payments.

* * * * *

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the mortgagor, or location of the property.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

11. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

12. Section 236.1 is amended to add a sentence at the end of paragraph (a) to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* * * * The definition of family in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236, or to financing pursuant to section 236(j)(3) of the purchase, by a cooperative or nonprofit corporation or association of a project assisted under section 236.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

13. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 5301–5320.

Subpart A—General Provisions

14. In § 570.3, the definitions of "family" and "household" are revised to read as follows:

§ 570.3 Definitions.

* * * * *

Family refers to the definition of "family" set out in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403, two or more families living together, or any other group of related or unrelated persons who share living arrangements, regardless of marital status, actual or perceived sexual orientation, or gender identity.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

15. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

16. In § 574.3, the definition of "family" is revised to read as follows:

§ 574.3 Definitions.

* * * * *

Family is defined as set forth in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of marital status, or actual or perceived sexual orientation or gender identity, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

17. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

18. In § 982.4, paragraphs (a)(1) is revised, paragraph (a)(2) is removed, paragraph (a)(3) is redesignated as new paragraph (a)(2), and the definition of "family" in paragraph (b) is revised to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere.* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, Federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing, Section 8, and violent criminal activity.

* * * * *

(b) * * *

Family. A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. *See* discussion of family composition at § 982.201(c).

* * * * *

19. In § 982.201, paragraph (c) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(c) *Family composition. See* definition of "family" in 24 CFR 5.403.

* * * * *

Dated: December 1, 2010.

Shaun Donovan,

Secretary.

[FR Doc. 2011–1346 Filed 1–21–11; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 118/P.L. 111–372
Section 202 Supportive Housing for the Elderly Act of 2010 (Jan. 4, 2011; 124 Stat. 4077)

S. 841/P.L. 111–373
Pedestrian Safety Enhancement Act of 2010 (Jan. 4, 2011; 124 Stat. 4086)

S. 1481/P.L. 111–374
Frank Melville Supportive Housing Investment Act of 2010 (Jan. 4, 2011; 124 Stat. 4089)

S. 3036/P.L. 111–375
National Alzheimer's Project Act (Jan. 4, 2011; 124 Stat. 4100)

S. 3243/P.L. 111–376
Anti-Border Corruption Act of 2010 (Jan. 4, 2011; 124 Stat. 4104)

S. 3447/P.L. 111–377
Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Jan. 4, 2011; 124 Stat. 4106)

S. 3481/P.L. 111–378
To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

S. 3592/P.L. 111–379
To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the "First Lieutenant Robert Wilson Collins Post Office Building". (Jan. 4, 2011; 124 Stat. 4130)

S. 3874/P.L. 111–380
Reduction of Lead in Drinking Water Act (Jan. 4, 2011; 124 Stat. 4131)

S. 3903/P.L. 111–381
To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo. (Jan. 4, 2011; 124 Stat. 4133)

S. 4036/P.L. 111–382
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury. (Jan. 4, 2011; 124 Stat. 4134)

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