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WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1011; Directorate Identifier 2010–CE–047–AD; Amendment 39–16571; AD 2011–01–14]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 Airplanes

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

ACTION: Final rule.

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

The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.

With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.

For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.

These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by EASA. Failure to comply with these MCAI constitutes an unsafe condition.

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

DATES: This AD becomes effective March 8, 2011.

On March 8, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, ACE–112 Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 7, 2010 (75 FR 62002), and proposed to supersede AD 2005–17–01, Amendment 39–14221 (70 FR 47716; August 15, 2005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.

With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.

For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.

These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by EASA. Failure to comply with these MCAI constitutes an unsafe condition.

For the reasons described above, this MCAI requires the implementation and the compliance with these new maintenance requirements and/or airworthiness limitations documents.

Since we issued AD 2005–17–01 concerning the inspection of the stabilizer-trim attachment components, Pilatus has updated their maintenance programs with new requirements and limitations. Since we are now mandating the new AMM, we are completely superseding AD 2005–17–01. Additionally, the AMM revisions in this AD action also include the new repetitive inspections for the wing strut fittings and spherical bearings currently included in AD 2009–18–03 (74 FR 43636; August 27, 2009). We are also removing those repetitive inspections from AD 2009–18–03. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request for Clarification on Applicability

Pilatus Aircraft commented that there is no consistency between 2010–CE–047–AD and 2009–CE–034–AD (AD 2009–18–03 (R1); 76 FR 1990; January 12, 2011) regarding the applicability of airplanes in regards to the manufacturer serial numbers (MSN) on the Fairchild PC–6 airplanes.

The FAA agrees that the applicability of airplanes needs corrected. We changed the applicability to clarify that some specific MSNs can also be identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Discussion Section Contains Confusing Reference to ADs

Pilatus Aircraft commented that the Discussion section contains confusing references to other ADs. They

commented that FAA AD 2005–17–01 refers to Pilatus SB 53–001/FOCA AD HB–2005–263. That Service Bulletin (SB) involves "Stabilizer-Trim Attachment Components," whereas FAA AD 2009–18–03 mentioned later in the NPRM involves wing strut fittings. The new CH4/ALS documents for the PC–6 contain the repetitive inspection requirements of both AD 2005–17–01 and AD 2009–18–03. Because the Discussion section references various FAA ADs and service bulletins, it is difficult to follow which service information corresponds with which AD.

The FAA agrees that the discussion paragraph could be more concise. We changed the information in the discussion paragraph to make it easier to understand how this AD action affects both AD 2005–17–01 and AD 2009–18–03.

Actions and Compliance Section States Both Documents Required

The Actions and Compliance section indicates that both AMM Doc. 01975 Rev 12 and ALS Doc. 02334 are applicable for each model airplane. Only one document should be applicable for each model airplane, not both.

The FAA agrees because both manuals are not required for each model of airplane, only the one that is appropriate. We changed paragraph (f) to specify which of the above documents apply to which airplanes.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $4,250, or $85 per product.

In addition, we estimate that any necessary follow-on actions based on maintenance requirements for the wing strut fittings and the spherical bearings following the Aircraft Maintenance Manual and the Airworthiness Limitations Section would take about 40 work-hours and require parts costing $12,000, for a cost of $15,400 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14221 (70 FR 47716; August 15, 2005) and adding the following new AD:

2011–01–14 Pilatus Aircraft Limited: Amendment 39–16571; Docket No. FAA–2010–1011; Directorate Identifier 2010–CE–047–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 8, 2011.

Affected ADs

(b) This AD supersedes AD 2005–17–01, Amendment 39–14221.

Applicability

(c) This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all manufacturer serial number (MSN) 101 through 999, and MSN 2001 through 2092, certificated in any category.

Note 1: For MSN 2001–2092, these airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild

Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 5: Time Limits.

Reason

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

The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.

With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.

For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.

These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by EASA. Failure to comply with these MCAI constitutes an unsafe condition.

For the reasons described above, this MCAI requires the implementation and the compliance with these new maintenance requirements and/or airworthiness limitations documents.

Actions and Compliance

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

(1) *For all affected Models PC–6/B2–H2 and PC–6/B2–H4;* Before further flight after March 8, 2011 (the effective date of this AD), incorporate the maintenance requirements as specified in Pilatus PC–6 AMM Chapter 04–00–00, Revision 12, Document Number 01975, dated May 14, 2010, into your FAA-accepted maintenance program.

(2) *For all affected PC–6 models other than the Models PC–6/B2–H2 and PC–6/B2–H4;* Before further flight after March 8, 2011 (the effective date of this AD), incorporate the maintenance requirements as specified in Pilatus PC–6 AMM ALS Document Number 02334, Revision 1, dated May 14, 2010, into your FAA-accepted maintenance program.

Note 2: The AMM revisions in this AD action include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03. AD 2009–18–03 (R1), Amendment 39–16570 has been revised to remove these repetitive inspections.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA AD No.: 2010–0176, dated August 20, 2010; and Pilatus PC–6 AMM Chapter 04–00–00, Revision 12, Document Number 01975, Revision 12, dated May 14, 2010; or in the Pilatus PC–6 ALS Document Number 02334, Revision 1, dated May 14, 2010, for related information.

Material Incorporated by Reference

(i) You must use Pilatus PC–6 AMM Chapter 04–00–00, Revision 12, Document Number 01975, dated May 14, 2010; and incorporate the Pilatus PC–6 ALS Document Number 02334, Revision 1, dated May 14, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com.*

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

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

Issued in Kansas City, Missouri, on December 28, 2010.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33332 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1028; Airspace Docket No. 10–AGL–16]

Amendment of Class E Airspace; Greensburg, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Greensburg, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Decatur County Memorial Hospital Heliport, Greensburg, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: *Effective date:* 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Greensburg, IN, creating additional controlled airspace at Decatur County Memorial Hospital Heliport (75 FR 68551) Docket No.

FAA–2010–1028. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT–IN–SPACE) standard instrument approach procedures at Decatur County Memorial Hospital Heliport, Greensburg, IN. This action is necessary for the safety and management of IFR operations at the heliport.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Decatur County Memorial Hospital Heliport, Greensburg, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IN E5 Greensburg, IN [Amended]

Greensburg-Decatur County Airport, IN
(Lat. 39°19′37″ N., long. 85°31′21″ W.)
Decatur County Memorial Hospital Heliport, IN
Point In Space
(Lat. 39°21′10″ N., long. 85°29′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Greensburg-Decatur County Airport, and within a 6-mile radius of the Decatur County Memorial Heliport point in space coordinates at lat. 39°21′10″ N., long. 85°29′09″ W.

Issued in Fort Worth, Texas, on January 14, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–2050 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1033; Airspace Docket No. 10–AGL–21]

Amendment of Class E Airspace; Richmond, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Richmond, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Reid Hospital Heliport, Richmond, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: *Effective date:* 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Richmond, IN, creating controlled airspace at Reid Hospital Heliport (75 FR 68555) Docket No. FAA–2010–1033. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at Reid Hospital Heliport, Richmond, IN. This action is necessary for the safety and management of IFR operations at the heliport.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Reid Hospital Heliport, Richmond, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IN E5 Richmond, IN [Amended]

Richmond Municipal Airport, IN
(Lat. 39°45′26″ N., long. 84°50′34″ W.)

Reid Hospital Heliport, IN
Point In Space
(Lat. 39°52′25″ N., long. 84°53′24″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Richmond Municipal Airport, and within a 6-mile radius of the Reid Hospital Heliport point in space at lat. 39°52′25″ N., long. 84°53′24″ W.

Issued in Fort Worth, Texas, on January 14, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–2055 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1030; Airspace Docket No. 10–AGL–18]

Amendment of Class E Airspace; La Porte, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at La Porte, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at La Porte Hospital Heliport, La Porte, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: *Effective date:* 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for La Porte, IN, creating controlled airspace at La Porte Hospital Heliport (75 FR 68556) Docket No. FAA–2010–1030. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at La Porte Hospital Heliport, La Porte, IN. This action is necessary for the safety and management of IFR operations at the heliport.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at La Porte Hospital Heliport, La Porte, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IN E5 La Porte, IN [Amended]

La Porte Municipal Airport, IN
(Lat. 41°34′21″ N., long. 86°44′04″ W.)
La Porte Hospital Heliport, IN
Point in Space
(Lat. 41°36′11″ N., long. 86°44′10″ W.)
La Porte NDB
(Lat. 41°29′56″ N., long. 86°46′17″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of La Porte Municipal Airport, and within 2.5 miles each side of the 201° bearing from the La Porte NDB extending from the 7.3-mile radius to 11.4 miles south of the airport, and within a 6-mile radius of the La Porte Hospital Heliport point in space at lat. 41°29′56″ N., long. 86°46′17″ W.

Issued in Fort Worth, Texas, on January 14, 2011.

Richard J. Kervin, Jr.,

Acting Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–2062 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1035; Airspace Docket No. 10–ACE–12]

Establishment of Class E Airspace; New Hampton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at New Hampton, IA, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Mercy Medical Center Heliport, New Hampton, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

DATES: *Effective date:* 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for New Hampton, IA, creating controlled airspace at Mercy Medical Center Heliport (75 FR 68558) Docket No. FAA–2010–1035. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT–IN–SPACE) standard instrument approach procedures at Mercy Medical Center Heliport, New Hampton, IA. This action is necessary for the safety and management of IFR operations at the heliport.

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. Therefore, this regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Mercy Medical Center Heliport, New Hampton, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE IA E5 New Hampton, IA [New]

New Hampton, Mercy Medical Center Heliport, IA

Point In Space
(Lat. 43°03′11″ N., long. 92°19′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Mercy Medical Center Heliport point in space at lat. 43°03′11″ N., long. 92°19′38″ W.

Issued in Fort Worth, Texas, on January 14, 2011.

Richard J. Kervin, Jr.,

Manager Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–2058 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 4, 5, 7, 9, 13, 16, 17, 18, 20, 22, 24, 25, 26, 28, 30, 40, 41, 44, 45, 53, 70, and 71

[Docket No. TTB–2011–0003; T.D. TTB–91]

RIN 1513–AB69

Technical Corrections to the TTB Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: In this final rule, the Alcohol and Tobacco Tax and Trade Bureau makes technical corrections to its regulations. These amendments correct grammatical, spelling and typographical errors, update cross-references, update references to the Bureau's administrative practices and organizational structure, and make other non-substantive corrections and clarifications. These amendments do not change the Bureau's interpretation of any regulation or the requirements of any recordkeeping provision.

DATES: *Effective Date:* March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Michael D. Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, telephone 202–453–2135.

SUPPLEMENTARY INFORMATION:

Background

In this final rule, the Alcohol and Tobacco Tax and Trade Bureau (TTB) makes technical corrections to its regulations, which are contained in 27 CFR chapter I. The amendments contained in this document correct grammatical, spelling and typographical errors, correct or update form numbers, correct or update cross-references to the United States Code and TTB regulations, update regulations to reflect current TTB administrative practices, correct or remove obsolete references to TTB's organizational structure or that of the former Bureau of Alcohol, Tobacco and Firearms (ATF), remove obsolete references to ATF or TTB publications, or make other non-substantive corrections and clarifications to the TTB regulations. These technical amendments do not change TTB's interpretation of any regulation or the requirements of any TTB recordkeeping provision.

Description of Corrections to 27 CFR Chapter I

Part 1

The definition of wine in § 1.10 is amended to clarify that the last clause in current paragraph (b) of the definition, "in each instance, only if containing not less than 7 percent and not more than 24 percent of alcohol by volume, and if for non-industrial use," applies to both clauses in the definition of wine: "(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 * * *" and "(2) Other alcoholic beverages not so defined, but made in the manner of wine * * *." This revision is made to improve the clarity and readability of the definition; this revision does not change the definition as interpreted by TTB or its predecessor agencies. Paragraphs (a) and (b) of this definition also are redesignated as paragraphs (1) and (2) to conform to current CFR designation practices.

Part 4

The definition of wine in § 4.10 is revised to clarify the source of the statutory definition of wine that it quotes, to update the reference to the applicable Internal Revenue Code of 1986 (IRC) sections, and to correct a typographical error in current paragraph (b). As in § 1.10, the definition of wine also is amended to clarify that the last clause in current paragraph (b) applies to both clauses of the definition of wine, and paragraphs (a) and (b) of the definition are redesignated as paragraphs (1) and (2) to conform to current CFR designation practices. These revisions are made to improve the clarity and readability of the definition; these revisions do not change the definition as interpreted by TTB or its predecessor agencies.

In addition, outdated cross-references are amended in §§ 4.5, 4.23, 4.28, 4.32, 4.37, 4.46, 4.70, and 4.71. Additionally, §§ 4.25, 4.61, and 4.65 are amended to correct typographical errors.

Part 5

When the original final rule establishing § 5.61 was published, the placeholder for the insertion of the rule's effective date was inadvertently left in place. Our amendment to this section removes the placeholder and inserts the correct effective date of September 7, 1984 (see T.D. ATF–180, 49 FR 31667, August 8, 1984). Additionally, § 5.22 is amended to correct a typographical error.

Part 7

Section 7.4 is amended to correct a cross-reference to the Department of Agriculture's National Organic Program regulations in 7 CFR part 205. Section 7.24 is amended to correct typographical errors in two German-language geographical names.

Part 9

Section 9.43 is amended to correct a typographical error in a State highway route number used in the boundary instructions for the Rocky Knob viticultural area in Virginia, and § 9.58 is amended to correct a misspelling.

Part 13

The definition of wine in § 13.11 is amended to clarify the source of the statutory definition of wine that it quotes, to update the reference to the applicable IRC sections, and to word and structure the definition in the same manner as done in § 4.10, as described above. In addition, paragraphs (a) and (b) of the definition are redesignated as paragraphs (1) and (2) to conform to current CFR designation practices. These revisions are made to improve the clarity and readability of the definition; these revisions do not change the definition as interpreted by TTB or its predecessor agencies.

In section 13.23, the reference to form ATF F 5190.1, Correction Sheet, is removed since that form is no longer in use. The reference to the form is replaced with a more general reference to "a certificate of label approval rejection document" to reflect TTB's current certificate of label approval process.

Part 16

Section 16.22 is amended to correct one typographical error.

Part 17

In 1994, section 136(a) of Public Law 103–45 added perfume to the kinds of products for which nonbeverage drawback is available, and this change was incorporated into part 17 by T.D. ATF–379 (61 FR 31412, June 20, 1996). Section 17.137 is amended to include

perfume since the necessary change to that section was inadvertently omitted from T.D. ATF–379. In addition, a typographical error is corrected in § 17.141.

Part 18

In § 18.34, a typographical error is corrected.

Part 20

Section 484F of Public Law 101–382 (August 20, 1990) struck out the word "domestic" from section 3(c) of the Foreign Trade Zones Act (see 19 U.S.C. 81c(c)). Prior to this amendment in the law, the Foreign Trade Zones Act allowed only domestic denatured spirits to be used in the manufacture of articles in a foreign trade zone. The law was amended in order to allow the manufacture in a zone of articles from denatured distilled spirits, whether foreign or domestic, that have been withdrawn free of tax from a distilled spirits plant (within the meaning of section 5002(a)(1) of the IRC). Sections 20.2 and 20.161 are amended to reflect this statutory change to the Foreign Trade Zones Act.

Part 22

Section 22.142 is amended to correct a typographical error.

Part 24

Sections 24.113, 24.272, 24.314, and 24.323 are amended to correct typographical errors. The authority citation for § 24.225 is revised to correct the omission of 26 U.S.C. 5214, and § 24.309 is amended to revise an incorrect cross-reference.

Section 24.168(c) is amended so that the regulation for the marking of barrels, puncheons, and similar bulk containers accounts for such containers with a capacity of exactly 100 gallons. The regulation, as currently written, only applies to such containers of less than 100 gallons or more than 100 gallons. Prior to the recodification of part 240 as part 24, 27 CFR 240.165 required a serial number on containers of 60 gallons capacity or more, but not on those of less than 60 gallons. In 1986, ATF proposed in Notice No. 584 (51 FR 8098) to revise and recodify the wine regulations, stating in the notice's preamble that the rules concerning winery construction and equipment were "significantly reduced" to allow "greater flexibility in establishing and operating wine premises." No comments were received on then-proposed § 24.168, and the omission of a reference to containers of exactly 100 gallon capacity was not corrected before the proposal was adopted as a final rule in T.D. ATF–299, 55 FR 24974 (June 19, 1990). The amendment herein establishes that containers of 100 gallons capacity will be treated in the same manner as containers of less than 100 gallons capacity.

Part 25

Sections 25.11, 25.62, 25.221, 25.223, 25.225, 25.292, and 25.294 are amended to correct various typographical errors.

Part 26

In § 26.31, which sets forth rules for determining how rum excise tax "cover-over" payments will be split between Puerto Rico and the U.S. Virgin Islands under 26 U.S.C. 7652(e), TTB is revising paragraph (a) which sets forth the applicable formula. The revision is intended to improve the readability of the text and to clarify how the formula has been and will be applied, consistent with the discussions and examples in the original 1985 notice of proposed rulemaking (Notice No. 558, 50 FR 6203) and 1986 final rule (T.D. ATF–233, 51 FR 28071, as corrected at 52 FR 2222).

Sections 26.50 and 26.220 are amended to revise incorrect cross-references. Typographical errors are corrected in §§ 26.112a, 26.126, and 26.128.

Part 28

Section 28.2 is amended to update the information on how the public may obtain TTB forms. Section 28.3 is amended to reflect the current title of 27 CFR part 1, and to add part 27 to the list of related regulations. Additionally, the heading and text of § 28.122 are amended to delete a reference to an ATF form and refer to the appropriate TTB form, as well as to correct a minor grammatical error.

Part 30

Section 30.32 is amended to revise an incorrect cross-reference.

Part 40

Sections 40.22, 40.42, 40.91, 40.165a, 40.231, and 40.357 are amended to correct various typographical errors. Sections 40.62, 40.66, 40.75, 40.92, 40.93, 40.104, 40.112, 40.114, 40.137, 40.281, 40.282, 40.283, 40.284, 20.286, 40.287, 40.311, 40.313, 40.356, 40.393, 40.407, 40.471, 40.472, 40.473, 40.474, and 40.478 are amended to update outdated ATF form numbers to current TTB form numbers. These form number revisions do not change any current TTB reporting or recordkeeping requirement.

Sections 40.67 and 40.111 are amended to update form numbers and to eliminate outdated references to the former ATF's regional structure which TTB does not use. Section 40.68 is also amended to update a form number and an outdated cross-reference. Section 40.201 is amended to remove outdated references to the former ATF's regional structure, and § 40.113 is removed in its entirety for the same reason.

In addition to correcting a form number in § 40.392, a cross-reference regarding bonds for manufacturers of cigarette papers and tubes is corrected due to an inadvertent error made in the 1996 redesignation of Part 285, Manufacture of Cigarette Papers and Tubes, as subpart K of Part 270, Manufacture of Tobacco Products (see T.D. ATF–384, 61 FR 54084, 10/17/1996). As part of the redesignation, subpart G of part 285 (§§ 285.401 through 285.410) became §§ 270.401 through 270.410 within subpart K of part 270. However, a separate and unrelated subpart G already existed within part 270 at the time of the redesignation. Therefore, with the redesignation of § 285.42 as § 270.392, the reference to "subpart G of this part" in the new § 270.392 should have been revised to read "§§ 270.401 through 270.410" in order to conform the cross-reference to the redesignated regulations. When part 270 was redesignated as part 40 in 2001 (*see* T.D. ATF–460, 66 FR 39091, 7/27/2001), § 270.392 became § 40.392 and the incorrect reference to subpart G was retained. This document corrects the reference to "subpart G of this part" in § 40.392 to read "§§ 40.401 through §§ 40.410."

Part 41

Section 41.115a is amended to correct a typographical error. Section 41.196 is amended to update the reference to a TTB form number.

Part 44

Section 44.2 is amended to remove a typographical error.

Part 45

Section 45.11 currently contains a definition of "District directorAdministrator." While "District directorAdministrator" contains a typographical error and should read "District director," the definition is removed entirely since the position of District director of internal revenue is no longer referred to in this part.

Part 53

Sections 53.96(b)(1) and (b)(2) are amended to add a cross-reference to the Internal Revenue Code, and a

typographical error is corrected in § 53.151(a)(2).

Part 70

Part 70, which contains procedural and administrative regulations, is amended to reflect TTB's current authorities, structure, and administrative practices, correct several typographical errors, and update various cross-references.

When section 1111 of the Homeland Security Act of 2002 (Pub. L. 107–296) abolished the former Bureau of Alcohol, Tobacco and Firearms (ATF) and created two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the Bureau of Alcohol, Tobacco, Firearms and Explosives, TTB updated its regulations in 27 CFR chapter I to reflect this division (see T.D. TTB–44, 71 FR 16918, April 14, 2006). However, several regulations in part 70 that required updating were not included in those amendments. Therefore, this document makes the following amendments to reflect current TTB authorities, organization, practices, and structure:

- In §§ 70.1, 70.21, 70.181, 70.306, and 70.413, outdated references to the former ATF's regional structure are eliminated.
- In § 70.11, the definition of *Provisions of 26 U.S.C. enforced and administered by the Bureau* is amended to reflect current TTB authorities. Section 70.11 is also amended to include a definition of "IRC."
- In §§ 70.441, 70.442, 70.443, 70.444, 70.445, and 70.448, references to outdated 27 CFR part numbers formerly used by ATF are updated to reflect the new 27 CFR chapter II part numbers used by the Bureau of Alcohol, Tobacco, Firearms and Explosives.
- Section 70.471 is amended for clarity and to eliminate references to matters under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives and to provide contact information at that agency for requests for information regarding its jurisdiction.

In addition, part 70 is amended to clarify existing TTB authorities and practices or to correct grammatical or typographical errors. Section 70.22(a) is revised to clarify TTB's existing authority, pursuant to 26 U.S.C. 7602(b), regarding the examination of books and witnesses for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws administered by TTB. Sections 70.22(b), 70.148, 70.486, and 70.803 are amended to correct typographical errors, and § 70.701(d) is amended to correct two grammatical errors. In addition, outdated references to the IRC of 1954 and obsolete 27 CFR part numbers are updated or removed in §§ 70.411 and 70.431.

Section 702 of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3, 123 Stat. 8) amended sections 5712, 5713, 5721, 5722, 5723, and 5741 of the IRC to extend permit, inventory, reporting, packaging, labeling, marking, noticing, and recordkeeping requirements to manufacturers and importers of processed tobacco even though such processed tobacco is not subject to excise tax under the IRC. As a result, TTB made amendments in 2009 to its tobacco regulations to reflect this new authority (see T.D. TTB–78, 74 FR 29401, 6/22/2009, for a full discussion of this issue). Therefore, the discussion of the 27 CFR parts 40 and 41 tobacco regulations in § 70.431(b) is amended to include references to processed tobacco.

In § 70.802, paragraph (g) regarding the handling of comments received in response to a notice of proposed rulemaking is amended to reflect TTB's current administrative practices. The revised text explains that comments received will be posted to the appropriate docket on the Regulations.gov Web site (*http://www.regulations.gov*), and that the comments will be available for in-person inspection in the TTB public reading room. The revised text also explains how to request copies of comments and, as stated in the current regulation, that the fees outlined in 31 CFR 1.7 apply to such requests.

Part 71

Section 71.27 is amended to add a missing end parenthesis, and § 71.108(a) is amended to correct a form number reference. Section 71.110 is obsolete and is being removed since TTB does not use the former ATF's regional structure.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not necessary.

Prior Notice and Comment Procedures

Because this final rule merely makes technical corrections to existing regulations to update or clarify the application of those provisions and does not change the Bureau's interpretation of any regulation or the requirements of any recordkeeping provision, TTB has determined in accordance with 5 U.S.C. 553(b)(B) that it is unnecessary and contrary to the public interest to follow prior public notice and comment procedures and, therefore, 5 U.S.C. 553(b) does not apply.

Drafting Information

Michael D. Hoover of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and Tobacco Tax and Trade Bureau personnel.

List of Subjects

Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Imports, Liquors, Packaging and containers, Warehouses, Wine.

Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

Part 9

Wine.

Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Part 16

Alcohol and alcoholic beverages, Consumer protection, Health, Labeling, Penalties.

Part 17

Administrative practice and procedure, Claims, Customs duties and inspection, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

Part 18

Alcohol and alcoholic beverages, Fruits, Reporting and recordkeeping requirements, Spices and flavorings.

Part 20

Alcohol and alcoholic beverages, Claims, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

Part 28

Alcohol and alcoholic beverages, Exports, Reporting and recordkeeping requirements.

Part 30

Liquors, Scientific equipment.

Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

Part 41

Cigars and cigarettes, Imports, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

Part 44

Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

Part 45

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

Part 53

Arms and munitions, Electronic funds transfers, Excise taxes, Exports, Imports, Reporting and recordkeeping requirements.

Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Part 71

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Amendments to the Regulations

For the reasons discussed in the preamble, 27 CFR chapter I is amended as set forth below:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, BULK SALES AND BOTTLING OF DISTILLED SPIRITS

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

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

■ 2. In § 1.10, the definition of "wine" is revised to read as follows:

§ 1.10 Meaning of terms.

* * * * *

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines "wine" as any of the following products for nonindustrial use that contain not less than 7 percent and not more than 24 percent alcohol by volume:

(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392); and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake.

* * * * *

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.5 [Amended]

■ 4. In § 4.5, the first related part listed is amended by removing the words "27 CFR Part 205" and adding, in their place, the words "7 CFR Part 205".

■ 5. In § 4.10, the definition of *Wine* is revised to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Wine. (1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392), only if for nonindustrial use and containing not less than 7 percent and not more than 24 percent of alcohol by volume; and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake, only if for nonindustrial use and containing not less than 7 percent and not more than 24 percent of alcohol by volume.

§ 4.23 [Amended]

■ 6. Section 4.23(a) is amended by removing the reference "§ 4.25a" and adding, in its place, the reference "§ 4.25".

§ 4.25 [Amended]

■ 7. Section 4.25(d) introductory text is amended by removing the word "appelation" and adding, in its place, the word "appellation".

§ 4.28 [Amended]

■ 8. The introductory text of § 4.28 is amended by removing the reference "§ 4.25a" and adding, in its place, the reference "§ 4.25".

§ 4.32 [Amended]

■ 9. Section 4.32(b)(2) is amended by removing the reference "§ 4.73" and adding, in its place, the reference "§ 4.72".

§ 4.37 [Amended]

■ 10. Section 4.37(a) introductory text is amended by removing the reference

"§ 4.73" wherever it appears and adding, in its place, the reference "§ 4.72".

§ 4.46 [Amended]

■ 11. The introductory text of § 4.46 is amended by removing the reference "§ 4.73" and adding, in its place, the reference "§ 4.72".

§ 4.61 [Amended]

■ 12. The introductory text of § 4.61 is amended by removing the word "othe" and adding, in its place, the word "other".

§ 4.65 [Amended]

■ 13. Section 4.65(a) is amended by removing the word "adverstising" and adding, in its place, the word "advertising".

■ 14. Section 4.70 is amended by revising the introductory text of paragraph (b) and revising paragraph (c) to read as follows:

§ 4.70 Application.

* * * * *

(b) Sections 4.71 and 4.72 of this part do not apply to:

* * * * *

(c) Section 4.72 of this part does not apply to wine domestically bottled or packed, either in or out of customs custody, before January 1, 1979, if the wine was bottled or packed according to the standards of fill (listed in ounces, quarts, and gallons) prescribed by regulation before that date.

§ 4.71 [Amended]

■ 15. Section 4.71(a)(2) is amended by removing the reference "§ 4.72 or § 4.73" and adding, in its place, the reference "§ 4.72".

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 16. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.22 [Amended]

■ 17. Section 5.22(i) is amended by adding a comma between the words "rum" and "vodka" in the first sentence.

§ 5.61 [Amended]

■ 18. Section 5.61 is amended by removing the parenthetical phrase "(effective date of this Treasury decision)" and adding in its place the date "September 7, 1984".

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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

Authority: 27 U.S.C. 205.

§ 7.4 [Amended]

■ 20. In § 7.4, the first related part listed is amended by removing the words "27 CFR Part 205" and adding, in its place, the words "7 CFR Part 205".

§ 7.24 [Amended]

■ 21. Section 7.24(f) is amended by removing the words "Wein, Weiner" and adding, in their place, the words "Wien, Wiener".

PART 9—AMERICAN VITICULTURAL AREAS

■ 22. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 9.43 [Amended]

■ 23. In § 9.43, paragraphs (c)(1) and (2) are amended by removing the number "779" and adding, in its place, the number "799".

§ 9.58 [Amended]

■ 24. Section 9.58(c)(13) is amended by removing the word "form" and adding, in its place, the word "from".

PART 13—LABELING PROCEEDINGS

■ 25. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

■ 26. Section 13.11 is amended by revising the definition of "wine" to read as follows:

§ 13.11 Meaning of terms.

* * * * *

Wine. (1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392), only if for nonindustrial use and containing not less than 7 percent and not more than 24 percent of alcohol by volume; and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake, only if for nonindustrial use and containing not less than 7 percent and not more than 24 percent of alcohol by volume.

§ 13.23 [Amended]

■ 27. Section 13.23 is amended by removing the words "TTB Form 5190.1, entitled "TTB F 5100.31 Correction Sheet,"" and adding, in its place, the words "a certificate of label approval rejection document".

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT

■ 28. The authority citation for part 16 continues to read as follows:

Authority: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

§ 16.22 [Amended]

■ 29. In § 16.22, paragraph (c) is amended by removing the word "thay" and adding, in its place, the word "they".

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 30. The authority citation for part 17 continues to read as follows:

Authority: 26 U.S.C. 5010, 5111–5114, 5123, 5206, 5273, 6065, 6091, 6109, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 17.137 [Amended]

■ 31. The first sentence of § 17.137 is amended by removing the words "nor a flavoring extract" and adding, in their place, the words "a flavoring extract, nor a perfume".

§ 17.141 [Amended]

■ 32. The last sentence of § 17.141 is amended by adding the word "officer" after the words "the appropriate TTB".

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

■ 33. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5171–5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 7805.

§ 18.34 [Amended]

■ 34. The second sentence of § 18.34 is amended by removing the words "form the date" and adding, in their place, the words "from the date".

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

■ 35. The authority citation for part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.2 [Amended]

■ 36. Section 20.2(b) is amended by removing the words ", with the exception that under this part only domestic denatured spirits may be used

in the manufacture of articles in a foreign-trade zone".

§ 20.161 [Amended]

■ 37. Section 20.161(a) is amended by removing the second and third sentences.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

■ 38. The authority citation for part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5123, 5206, 5214, 5271–5275, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7805; 31 U.S.C. 9304, 9306.

§ 22.142 [Amended]

■ 39. Section 22.142(d) is amended by removing the words "an TTB officer" and adding, in their place, the words "a TTB officer".

PART 24—WINE

■ 40. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.113 [Amended]

■ 41. In § 24.113, the fourth sentence is amended by removing the word "most" and adding, in its place, the word "must".

■ 42. In § 24.168(c), revise the second sentence to read as follows:

§ 24.168 Identification of tanks.

* * * * *

(c) * * * A permanent serial number need not be marked on puncheons and barrels, or similar bulk containers of 100 gallons capacity or less, used for storage, but the capacity must be permanently marked.

■ 43. In § 24.225, the authority citation at the end of the section is revised to read as follows:

§ 24.225 General.

* * * * *

(Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1381–1384, as amended (26 U.S.C. 5214, 5366, 5373, 5382, 5383))

§ 24.272 [Amended]

■ 44. Section 24.272(e) is amended by removing the words "an TTB Procedure" and adding, in their place, the words "a TTB Procedure".

§ 24.309 [Amended]

■ 45. Section 24.309(l) is amended by removing the reference "§ 24.315" and adding, in its place, the reference "§ 24.314".

§ 24.314 [Amended]

■ 46. Section 24.314 is amended by removing the words "an TTB audit" and adding, in their place, the words "a TTB audit".

§ 24.323 [Amended]

■ 47. In § 24.323, amend the first sentence by removing the words "an TTB F 5200.24" and adding, in their place, the words "a TTB F 5200.24".

PART 25—BEER

■ 48. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.11 [Amended]

■ 49. In § 25.11, the definition of *Executed under penalties of perjury* is amended by removing the words "has been examined by men" and adding, in their place, the words "has been examined by me".

§ 25.62 [Amended]

■ 50. Section 25.62(b) is amended by removing the words "an TTB office" and adding, in their place, the words "a TTB office".

§ 25.221 [Amended]

■ 51. Section 25.221(a)(2) is amended by removing the word "been" and adding, in its place, the word "beer".

§ 25.223 [Amended]

■ 52. In § 25.223(b), the first sentence is amended by removing the word "approriate" and adding, in its place, the word "appropriate".

§ 25.225 [Amended]

■ 53. Section 25.225(a) is amended by removing the word "taven" and adding, in its place, the word "tavern".

§ 25.292 [Amended]

■ 54. Section 25.292(a)(8) is amended by removing the word "bottels" and adding, in its place, the word "bottles".

§ 25.294 [Amended]

■ 55. In § 25.294(a), the first sentence is amended by removing the word "calender" and adding, in its place, the word "calendar".

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 56. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 57. Section 26.31 is amended by revising paragraph (a) to read as follows:

§ 26.31 Formula.

(a) The amount of excise taxes collected on rum that is imported into the United States from areas other than Puerto Rico and the Virgin Islands shall be deposited into the Treasuries of Puerto Rico and the Virgin Islands at the rate prescribed in 26 U.S.C. 7652(f). The distribution of such amount between Puerto Rico and the Virgin Islands shall be computed by using permanent base percentages, which represent the excise taxes collected on rum brought into the United States from Puerto Rico and from the Virgin Islands during fiscal year 1983. The base percentages are 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. The formula shall be as follows:

(1) Take the total amount of excise taxes collected on all rum brought or imported into the United States from all areas (including Puerto Rico and the Virgin Islands) during the previous fiscal year (October 1–September 30) and multiply that amount by 0.87626889 to determine the share of the entire U.S. rum market that will be allotted to Puerto Rico and by 0.12373111 to determine the share of the entire U.S. rum market that will be allotted to the Virgin Islands;

(2) Subtract from the share allotted to Puerto Rico under paragraph (a)(1) of this section the excise taxes collected on rum brought into the United States from Puerto Rico during the previous fiscal year, and subtract from the share allotted to the Virgin Islands under paragraph (a)(1) of this section the excise taxes collected on rum imported into the United States from the Virgin Islands during the previous fiscal year, to determine each possession's loss or gain in excise taxes in relation to the previous fiscal year's U.S. rum market. Then divide each result by the total

excise taxes collected on rum imported into the United States during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands.

* * * * *

§ 26.50 [Amended]

■ 58. Section 26.50(b) is amended by removing the words "27 CFR part 240" and adding, in their place, the words "part 24 of this chapter".

§ 26.112a [Amended]

■ 59. In § 26.112a, paragraph (e) is amended by removing the words "an TTB Procedure" and adding, in their place, the words "a TTB procedure".

§ 26.126 [Amended]

■ 60. Section 26.126 is amended by removing the words "an TTB receipt" and adding, in their place, the words "a TTB receipt".

§ 26.128 [Amended]

■ 61. Section 26.128 is amended by removing the words "an TTB receipt" and adding, in their place, the words "a TTB receipt".

§ 26.220 [Amended]

■ 62. Section 26.220(b) is amended by removing the reference "part 240" and adding, in its place, the reference "part 24".

PART 28—EXPORTATION OF ALCOHOL

■ 63. The authority citation for part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

■ 64. Amend § 28.2 by revising paragraph (b) to read as follows:

§ 28.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

* * * * *

■ 65. In § 28.3, the list of related regulations is amended by revising the entry for 27 CFR part 1 and adding an entry for 27 CFR part 27 to read as follows:

§ 28.3 Related regulations.

* * * * *

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits

* * * * *

27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer

* * * * *

■ 66. Section 28.122 is amended by:

■ a. Revising the section heading to read as set forth below;

■ b. Removing the words "ATF Form 5100.11" in the first sentence of paragraph (a) and adding, in their place, the words "TTB Form 5100.11"; and

■ c. Removing the words "an TTB Form" in paragraph (c) and adding, in their place, the words "a TTB Form".

§ 28.122 Application or notice, TTB Form 5100.11.

* * * * *

PART 30—GAUGING MANUAL

■ 67. The authority citation for part 30 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 30.32 [Amended]

■ 68. Section 30.32(c) is amended by removing the reference "§ 13.23" and adding, in its place, the reference "§ 30.23".

PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 69. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703–5705, 5711–5713, 5721–5723, 5731–5734, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 40.22 [Amended]

■ 70. Section 40.22(b)(2)(i) is amended by removing the words "an TTB determination" and adding, in their place, the words "a TTB determination".

§ 40.42 [Amended]

■ 71. Section 40.42 is amended by removing the word "neccessary" and adding, in its place, the word "necessary".

§§ 40.62, 40.66, 40.75, 40.92, 40.93, 40.104, 40.112, 40.114, 40.137, 40.281, 40.282, 40.283, 40.284, 40.286, 40.287, 40.311, 40.313, 40.356, 40.393, 40.407, 40.471, 40.472, 40.473, 40.474, and 40.478 [Amended]

■ 72. In the table below, for each section indicated in the left-hand column, remove the text indicated in the middle column, and add in its place the text indicated in the right-hand column:

Section	Remove	Add
40.62	Form 2093	TTB F 5200.3
40.66	Form 3070	TTB F 5200.25 or 5200.26
40.75	Form 2096	TTB F 5200.10
40.92	Form 2098	TTB F 5200.16
40.93	Form 2098	TTB F 5200.16
40.104	Form 2093	TTB F 5200.3
40.112	Form 2098	TTB F 5200.16
40.114	Form 2098	TTB F 5200.16
40.137	Form 2105	TTB F 5000.18
40.281	Form 2635 (5620.8)	TTB F 5620.8
40.282 in the second sentence	Form 2635	TTB F 5620.8
40.282 in the seventh sentence	Form 2635	TTB F 5620.8
40.283 in the second sentence	Form 2635 (5620.8)	TTB F 5620.8
40.283 in the fifth sentence (twice)	Form 2635 (5620.8)	TTB F 5620.8
40.283 in the sixth sentence	Form 2635	TTB F 5620.8
40.284 in the third sentence	Form 2635	TTB F 5620.8
40.284 in the last sentence	Form 2635	TTB F 5620.8
40.286	Form 2635 (5620.8)	TTB F 5620.8
40.287 in the first sentence	Form 2635	TTB F 5620.8
40.287 in the last sentence	Form 2635	TTB F 5620.8

Section	Remove	Add
40.311(b)	Form 2635 (5620.8)	TTB F 5620.8
40.313	Form 2635 (5620.8)	TTB F 5620.8
40.356	Form 2635 (5620.8)	TTB F 5620.8
40.393 in the first sentence	TTB Form 1534 (5000.8)	TTB F 5000.8
40.393 in the last sentence	TTB Form 5000.8	TTB F 5000.8
40.407	TTB Form 2105 (5000.7)	TTB F 5000.18
40.471	TTB Form 2635 (5620.8)	TTB F 5620.8
40.472 in the second sentence	TTB Form 2635 (5620.8)	TTB F 5620.8
40.472 in the sixth and seventh sentences	TTB Form 2635 (5620.8)	TTB F 5620.8
40.473 in the second sentence	TTB Form 2635 (5620.8)	TTB F 5620.8
40.473 in the fifth and sixth sentences	TTB Form 2635 (5620.8)	TTB F 5620.8
40.474 in the third sentence	TTB Form 2635 (5620.8)	TTB F 5620.8
40.474 in the last sentence	TTB Form 2635 (5620.8)	TTB F 5620.8
40.478	TTB Form 2635 (5620.8)	TTB F 5620.8

§ 40.67 [Amended]

■ 73. Section 40.67 is amended by removing the words "Form 3070" and adding, in their place, the words "TTB F 5200.25 or 5200.26", and by removing the words "in the same region" both places they occur.

§ 40.68 [Amended]

■ 74. Section 40.68 is amended as follows:

■ a. In the first and last sentences, by removing the words "Form 1534" each place they occur and adding, in their place, the words "TTB F 5000.8"; and

■ b. In the second sentence (the parenthetical full sentence), by removing the words "subpart E, part 601 of this chapter" and adding, in their place, the words "26 CFR 601.501 through 601.527".

§ 40.91 [Amended]

■ 75. Section 40.91 is amended by removing the comma after the word "manufacturer".

■ 76. Section 40.111 is revised to read as follows:

§ 40.111 Change in location.

Whenever a manufacturer of tobacco products intends to relocate its factory, the manufacturer shall, before commencing operations at the new location, make application on TTB F 5200.16 for, and obtain, an amended permit. The application shall be supported by bond coverage in accordance with the provisions of subpart G of this part.

§ 40.113 [Removed]

■ 77. Section 40.113 is removed.

§ 40.165a [Amended]

■ 78. In § 40.165a, paragraph (e) is amended by removing the words "an TTB Procedure" and adding, in their place, the words "a TTB procedure".

§ 40.201 [Amended]

■ 79. In § 40.201, the second sentence is amended by removing the words "to a different region".

§ 40.231 [Amended]

■ 80. In § 40.231, the third sentence is amended by removing the words "of whose duties" and adding, in their place, the words "or whose duties".

§ 40.357 [Amended]

■ 81. Section 40.357(a)(1) is amended in the first sentence by removing the words "five millions dollars" and adding, in their place, the words "five million dollars".

§ 40.392 [Amended]

■ 82. In § 40.392:

■ a. The first sentence is amended by removing the words "TTB Form 2102 (5210.1)" and adding, in their place, the words "TTB F 5200.25 or 5200.26"; and

■ b. The second sentence is amended by removing the words "subpart G of this part" and adding, in their place, the words "§§ 40.401 through 40.410".

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 83. The authority citation for part 41 continues to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 41.115a [Amended]

■ 84. In § 41.115a, paragraph (e) is amended by removing the words "an TTB Procedure" and adding, in their place, the words "a TTB procedure".

§ 41.196 [Amended]

■ 85. Section 41.196 is amended by removing the words "Form 1534" wherever they appear and adding, in their place, the words "TTB F 5000.8".

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 86. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703–5705, 5711–5713, 5721–5723, 5731–5734, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 44.2 [Amended]

■ 87. In § 44.2(a), the first sentence is amended by removing the second occurrence of the word "appropriate".

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

■ 88. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

§ 45.11 [Amended]

■ 89. Section 45.11 is amended by removing the definition of *District directorAdministrator.*

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

■ 90. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502, 7805.

§ 53.96 [Amended]

■ 91. In § 53.96, amend paragraphs (b)(1) and (b)(2) by removing the words "section 4216(a) of the Code" and adding, in their place, the words "sections 4216(a) and (e) of the Code".

§ 53.151 [Amended]

■ 92. In § 53.151, amend paragraph (a)(2) by removing the word "calandar" each of the two places it occurs and adding, in its place, the word "calendar".

PART 70—PROCEDURE AND ADMINISTRATION

■ 93. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.1 [Amended]

■ 94. Section 70.1(a)(1) is amended by removing the words "canvass of regions for taxable objects" and adding, in their place, the words "canvass for taxable objects".

■ 95. Section 70.11 is amended by adding, in alphabetical order, the definition of "IRC" and by revising the definition of "Provisions of 26 U.S.C. enforced and administered by the Bureau" to read as follows:

§ 70.11 Meaning of terms.

* * * * *

IRC. IRC refers to the Internal Revenue Code of 1986, as amended (codified in 26 U.S.C.).

* * * * *

Provisions of 26 U.S.C. enforced and administered by the Bureau. Sections 4181 and 4182 of the IRC; subchapters F and G of chapter 32 of the IRC insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the IRC; chapters 51 and 52 of subtitle E of the IRC; and subtitle F of the IRC insofar as it relates to any of the foregoing.

* * * * *

■ 96. The heading of § 70.21 is revised to read as follows:

§ 70.21 Canvass for taxable persons and objects.

* * * * *

■ 97. Section 70.22 is amended by revising paragraph (a) and in paragraph (b) by removing the word "officersare" and adding, in its place, the words "officers are".

The revision reads as follows:

§ 70.22 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax (including any interest, additional amount, addition to the tax, or civil penalty) imposed under provisions of the IRC enforced and administered by the Bureau or the liability at law or in equity of any transferee or fiduciary of any person in respect of any such tax, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws that are administered and enforced by the Bureau, any appropriate TTB officer may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

* * * * *

§ 70.148 [Amended]

■ 98. In § 70.148(c)(2), the second sentence is amended by removing the words "an TTB" and adding, in their place, the words "a TTB", and the third sentence is amended by removing the words "An TTB" and adding, in their place, the words "A TTB".

§ 70.306 [Amended]

■ 99. In § 70.306(b)(2), the first sentence is amended by removing the words "but within a TTB region,".

§ 70.411 [Amended]

■ 100. Section 70.411 is amended:

■ a. In paragraph (a), by removing the words "Internal Revenue Code of 1954" and adding, in their place, the word "IRC";

■ b. In paragraph (c)(6), by removing the reference "part 1," and adding, in its place, the reference "part 1, subpart C,";

■ c. In paragraph (c)(7), by removing the reference "part 3," and adding, in its place, the reference "part 1, subpart E,"; and

■ d. In paragraph (c)(12), by removing the reference "part 2," and adding, in its place, the reference "part 1, subpart D,".

§ 70.413 [Amended]

■ 101. In § 70.413(e), the first sentence is amended by removing the words "file claim on Form 5620.8 of the region in which the product was lost, rendered unmarketable, or condemned, for payment" and adding, in their place, the words "file a claim on form TTB F 5620.8 for payment".

■ 102. In § 70.431:

■ a. The first sentence of paragraph (a) is amended by removing the words "Internal Revenue Code of 1954, as amended," and adding, in their place, the word "IRC";

■ b. The introductory text of paragraph (b) is amended by removing the words "and cigarette papers and tubes" and adding, in their place, the words ", cigarette papers and tubes, and processed tobacco".

■ c. Paragraph (b)(2) is revised;

■ d. Paragraph (b)(3) is revised; and

■ e. Paragraph (b)(4) is removed and reserved.

The revision reads as follows:

§ 70.431 Imposition of taxes; regulations.

* * * * *

(b) * * *

(2) Part 40 of title 27 CFR relates to the manufacture of tobacco products, cigarette papers and tubes, and processed tobacco, the payment of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code on manufacturers of tobacco products and of cigarette papers and tubes, and the qualification of and operations by manufacturers of tobacco products, cigarette papers and tubes, and processed tobacco.

(3) Part 41 of title 27 CFR relates to tobacco products, cigarette papers and tubes, and processed tobacco imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of tobacco products, and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

* * * * *

§ 70.441 [Amended]

■ 103. In § 70.441, paragraph (d) is amended in the first sentence by removing the words "part 47 of this chapter" and adding, in their place, the words "27 CFR part 447".

§ 70.442 [Amended]

■ 104. The introductory text of § 70.442 is amended by removing the reference

"Part 179" and adding, in its place, the reference "Part 479".

§ 70.443 [Amended]

■ 105. Section 70.443(a)(1) introductory text is amended by removing the reference "part 178" and adding, in its place, the reference "part 478".

§ 70.444 [Amended]

■ 106. The introductory text of § 70.444 is amended by removing the reference "Part 47" wherever it occurs and adding in its place the reference "Part 447", and by removing the reference "parts 178 and 179" and adding, in its place, the reference "parts 478 and 479".

§ 70.445 [Amended]

■ 107. The introductory text of § 70.445 is amended by removing the reference "Part 55" and adding, in its place, the reference "Part 555".

§ 70.448 [Amended]

■ 108. Section 70.448(a)(1) is amended by removing the reference "part 179" and adding, in its place, the reference "part 479".

§ 70.462 [Amended]

■ 109. Section 70.462 is amended by removing the words "27 CFR part 196 relating to stills;".

■ 110. Section 70.471 is revised to read as follows:

§ 70.471 Rulings.

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with the following may request a ruling thereon by addressing a letter to the appropriate TTB officer:

(1) Operations or transactions in the alcohol tax area (26 U.S.C. chapter 51), the Federal Alcohol Administration Act (27 U.S.C. chapter 8, including the Alcohol Beverage Labeling Act of 1988), or the Webb-Kenyon Act (27 U.S.C. 122);

(2) Operations or transactions in the tobacco tax area (26 U.S.C. chapter 52);

(3) Operations or transactions in the firearms and ammunition manufacturers excise tax area (26 U.S.C. 4181–4182);

(4) Subchapters F and G of chapter 32 of the IRC insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the IRC; and

(5) Subtitle F of the IRC insofar as it relates to any of the foregoing.

(b) *Routine requests for information.* Routine requests for information should be addressed to the appropriate TTB officer.

(c) *Matters under ATF jurisdiction.* For rulings on matters under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives (Department of Justice), contact the Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Public and Governmental Affairs, 99 New York Avenue, NE., Washington, DC 20226, or view the contact information posted online at *http://www.atf.gov/contact/.*

§ 70.486 [Amended]

■ 111. Section 70.486 is amended by removing the words "an TTB employee" and adding, in their place, the words "a TTB employee".

§ 70.701 [Amended]

■ 112. In § 70.701:

■ a. Paragraph (d)(2)(i)(A) is amended by removing the words "An "TTB Ruling"" and adding, in their place, the words "A "TTB Ruling"";

■ b. Paragraph (d)(2)(i)(B) is amended by removing the words "An "TTB Procedure"" and adding, in their place, the words "A "TTB Procedure"".

■ 113. In § 70.802, paragraph (g) is revised to read as set forth below.

§ 70.802 Rules for disclosure of certain specified matters.

* * * * *

(g) *Comments received in response to a notice of proposed rulemaking.* (1) The Bureau will post written comments received in response to a notice of proposed rulemaking to the appropriate rulemaking docket on the Regulations.gov Web site at *http://www.regulations.gov.* The Bureau reserves the right not to post lengthy paper comments or attachments requiring scanning, although a notice regarding the receipt of any such non-posted comments or attachments will be made to Regulations.gov. TTB will not post duplicate or anonymous comments to Regulations.gov.

(2) All comments and attachments received in response to a notice of proposed rulemaking may be inspected by any person in the Bureau's public reading room by appointment during normal business hours. Copies of comments (or portions therefore) also may be obtained. Appointment and copy requests may be addressed to the appropriate TTB officer in writing to the Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220, or by telephone at 202–453–2270. A person requesting copies should allow a reasonable time for processing the request. The provisions of 31 CFR 1.7, relating to fees, apply to requests made in accordance with this paragraph.

* * * * *

§ 70.803 [Amended]

■ 114. In § 70.803(f):

■ a. The first sentence is amended by removing the word "TTBF" and adding, in its place, the word "TTB"; and

■ b. The second sentence is amended by removing the word "ATF" each place it occurs and adding, in its place, the word "TTB".

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

■ 115. The authority citation for part 71 continues to read as follows:

Authority: 26 U.S.C. 5271, 5181, 5712, 5713, 7805, 27 U.S.C. 204.

§ 71.27 [Amended]

■ 116. Section § 71.27 is amended by removing "appeal" at the end of the section and adding, in its place, "appeal)".

§ 71.108 [Amended]

■ 117. Section 71.108(a) is amended by removing the parenthetical phrase "(Form 1430–B)" and adding, in its place, the parenthetical phrase "(on TTB F 5000.5)".

§ 71.110 [Removed]

■ 118. Remove § 71.110.

Signed: October 15, 2010.

John J. Manfreda,

Administrator.

Approved: October 22, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–1279 Filed 1–31–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 548

Belarus Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Belarus Sanctions Regulations in the Code of Federal Regulations to revoke a general license authorizing U.S. persons to engage until May 31, 2011, in otherwise prohibited transactions with two blocked entities, Lakokraska OAO and/or Polotsk Steklovolokno OAO.

DATES: *Effective Date:* This rule is effective February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance,

Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

Following the December 19, 2010 presidential elections in Belarus and the announcement by state-run media on election night that President Lukashenko had received approximately 80 percent of the vote, some opposition candidates and their supporters gathered at Independence Square in the Belarusian capital, Minsk, to protest. Belarusian riot police beat and arrested over 600 protesters, including most of the opposition candidates and many journalists, human rights activists, and civil society representatives. Press reports indicate that as of January 18, at least 31 protesters (including several opposition candidates) remain in jail, facing up to 15 years in prison on charges of organizing or participating in mass riots. Since the demonstration, the government has engaged in a further crackdown against offices and members of political parties, civil society and independent media.

While the Organization for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) noted that the presidential election showed certain improvements over previous elections, ODIHR observed significant flaws during the vote count. ODIHR determined that the lack of transparency in the vote count undermined any improvements in the electoral process. The post-election violence further marred the presidential elections and drew condemnation from the United States and the European Union. On December 23, 2010, U.S. Secretary of State Hillary Clinton and EU High Representative Catherine Ashton issued a joint statement calling for the immediate release of all opposition protesters taken into custody following the presidential elections. Secretary Clinton and High Representative Ashton also deemed the flawed vote count and post-election violence an "unfortunate step backwards" for democracy and human rights in Belarus.

In light of these recent developments and the decision by the Government of Belarus to close the Minsk office of the OSCE, OFAC is amending the Belarus Sanctions Regulations, 31 CFR part 548 (the "Regulations"), to revoke the general license in section 548.509 authorizing U.S. persons to engage until May 31, 2011, in all otherwise prohibited transactions with two blocked entities, Lakokraska OAO and/or Polotsk Stoklovolokno OAO. This license had been issued in 2008 in response to the Belarusian Government's release of its political prisoners. The revocation of the general license in section 548.509 of the Regulations will be effective on February 11, 2011. This delayed effective date gives U.S. persons a reasonable period of time to wind down and terminate any transactions previously entered into with Lakokraska OAO and/or Polotsk Stoklovolokno OAO under section 548.509 of the Regulations.

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 548

Administrative practice and procedure, Banks, Banking, Belarus, Blocking of assets, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Services.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 548 as follows:

PART 548—BELARUS SANCTIONS REGULATIONS

■ 1. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 548.509 [Removed]

■ 2. Remove § 548.509.

Dated: January 25, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–2178 Filed 1–31–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA–2010–0017 (HM–245)]

RIN 2137–AE56

Hazardous Materials: Incorporation of Certain Cargo Tank Special Permits Into Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations by incorporating provisions contained in certain widely used or longstanding cargo tank special permits that are granted to multiple parties and have established safety records. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. The revisions are intended to provide wider access to the regulatory flexibility offered in the special permits and eliminate the need for numerous renewal requests, thereby facilitating commercial activity and reducing paperwork burdens while continuing to maintain an appropriate level of safety.

DATES: *Effective date:* The effective date of this final rule is March 3, 2011.

Incorporation by reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 3, 2011.

Voluntary Compliance date: Immediate voluntary compliance with the requirements of this final rule is authorized as of February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre or Matthew Nickels, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), or John Van Steenburg, Office of Enforcement and Compliance, (202) 366–5125, Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background
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I. Background

On July 21, 2010, PHMSA issued a notice of proposed rulemaking (NPRM; 75 FR 42364) proposing to incorporate into the Hazardous Materials Regulations (HMR) provisions contained in six widely used and longstanding cargo tank special permits that are granted to multiple parties and have established safety records. We discussed how this action would reduce paperwork and compliance burdens, lower cost burdens on both industry and government by removing the need to apply for and renew special permits, and facilitate commerce while maintaining a level of safety equal to or greater than that of the current HMR requirements. We proposed to incorporate the provisions of six special permits into the HMR. We did not propose to materially change the special permits, nor did we seek comments for revising the special permits. (*See* Beyond-the-Scope discussion under "II. Comments to the NPRM.")

The six special permits addressed in the NPRM were:

- *Special Permit (SP) 11209*—Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes.
- *SP 13113*—Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks that are used exclusively for agricultural purposes.
- *SP 12284*—Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks.
- *SP 13341*—Authorization for private motor carriers to transport LPG in consumer storage containers filled to greater than five percent of the container's water capacity.
- *SP 10950*—Authorization to transport nurse tanks securely mounted on field trucks.
- *SP 13554*—Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions.

The decision to consider the incorporation of these special permits into the HMR is based on special permits issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127) and the length of time these special permits have been in use with demonstrated records of safety. A special permit sets forth alternative requirements to the HMR by means that achieve a level of safety equal to or greater than that required by regulation and that are consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

As discussed in the NPRM, the HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. However, not every transportation situation can be anticipated and included in the regulations. Innovation is one of the strengths of our economy and the hazardous materials community is particularly strong at developing new technologies and pioneering ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream, thereby providing a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with established safety records for adoption into the HMR. Adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether a special permit is a candidate for regulatory incorporation include: the safety record of the special permit; the properties of the hazardous material; the transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities. Special permits reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers. Converting special permits into regulations reduces paperwork burdens.

Although PHMSA does not issue special permits to industry associations, PHMSA may issue a special permit to members of an industry association when many of its members have a common interest in obtaining authority to perform a specific transportation activity. Special permits issued to the members of associations are potentially among the most suitable types of special permits for later adoption into the HMR. Such special permits have broad applicability, and many of them have been in effect for a number of years and have proven safety records.

II. List of Commenters, General Comments, and Beyond-the-Scope Comments

PHMSA received 16 comments in response to the NPRM. Some of the commenters requested that we expedite the issuance of this final rule because of impending expiration dates for certain special permits. We recognize their concerns and have made every effort to finalize this rulemaking in an expeditious manner. While the majority of the commenters supported the proposals in the NPRM, some commenters had suggestions for additional revisions and one commenter questioned the safety of certain special permits. Comments that addressed the recommendation of additional revisions are beyond the scope of this rulemaking (*see* Beyond-the-Scope comments following the list of commenters). The comments, as submitted to this docket, may be accessed via *http://www.regulations.gov* and were submitted by the following individuals, companies and associations:

(1) Far West Agribusiness Association; PHMSA–2010–0017–0002.

(2) Dusty Farm Co-Op; PHMSA–2010–0017–0003.

(3) The Fertilizer Institute; PHMSA–2010–0017–0004.

(4) Trinity Containers, LLC; PHMSA–2010–0017–0005.
(5) Lisa Anderson; PHMSA–2010–0017–0006.
(6) North Central AG; PHMSA–2010–0017–0007.
(7) James T. Osterhaus; PHMSA–2010–0017–0008.
(8) National Propane Gas Association; PHMSA–2010–0017–0009.
(9) American Trucking Associations, Inc.; PHMSA–2010–0017–0010.
(10) American Welding and Tank, LLC; PHMSA–2010–0017–0011.
(11) National Tank Truck Carriers, Inc.; PHMSA–2010–0017–0012.
(12) Fisk Tank Carrier; PHMSA–2010–0017–0013.
(13) National Fire Protection Association; PHMSA–2010–0017–0014 and 0018.
(14) Agricultural Retailers Association; PHMSA–2010–0017–0015.
(15) CHS Inc.; PHMSA–2010–0017–0016.
(16) CHS Agri Service Center; PHMSA–2010–0017–0017.

Beyond-the-Scope Comments

Comments that addressed the recommendation of additional revisions to those proposed in the NPRM are beyond the scope of this rulemaking and, therefore, cannot be addressed for incorporation into the HMR in this final rule. Such revisions must first be presented in an NPRM to provide opportunity for comment from industry and the public. While we agree that certain beyond-the-scope issues merit PHMSA's consideration, we urge those commenters who submitted beyond-the-scope issues to request a change in the regulations by filing the recommendations as petitions for rulemakings in accordance with §§ 106.95 and 106.100.

Beyond-the-Scope comments to this rulemaking include the following:

• The National Tank Truck Carriers (NTTC) had concerns about carrier-type status and limitations to non-agricultural operations, stating that all special permits should have these limitations removed. This rulemaking addresses incorporating special permits as currently written.

• For SP 11209 and SP 13113, the American Trucking Association (ATA) contended that the special permits should not be limited to private motor carriers and agricultural operations, adding that PHMSA must provide evidence that for-hire carriers and non-agricultural activities are unsafe. As stated previously, this rulemaking addresses incorporating special permits as currently written. ATA is encouraged to further explain its arguments in favor of wider applicability of the provisions and submit a petition for rulemaking.

• For SP 11209, the National Fire Protection Association (NFPA) questioned why the special permit requires that the cargo tanks be painted white, aluminum, or other light reflecting color, because it is not a requirement in NFPA 58 for propane storage tanks. This rulemaking addresses incorporating special permits as currently written.

• For SP 11209, NTTC asked whether a carrier should follow the HMR requirements or the NFPA requirements in cases where the HMR adopts an NFPA requirement by citing it in the HMR regulatory text. NTTC states that in such cases, there are a number of places in NFPA pamphlets that conflict with requirements in the HMR. The commenter suggests that special permits should include a statement that cargo tanks must conform to a certain NFPA requirement unless that requirement conflicts with an HMR requirement. In its comment, NFPA provided the following example: "NFPA requires double bulkheads between compartments on cargo tanks hauling flammable liquids while Title 49 CFR does not." While this may be an issue that requires further investigation, SP 11209 authorizes the transport of liquefied petroleum gases, not flammable liquids. We are unaware of conflicts between NFPA Pamphlet 58 and SP 11209 or any other incorporated by reference material, but we invite NTTC to identify any conflicts and present their issues in a petition for rulemaking. This rulemaking addresses incorporating special permits as currently written.

• For SP 13113, the Agricultural Retailers Association (ARA) suggested that movements of liquid pesticide fumigants in MC 306, DOT 406, and DOT 57 containers should be authorized from distribution point to retail facility. The association stated that there is no safety difference between movements from distribution point to retail facility and movements from retail facility to farm. This rulemaking addresses incorporating special permits as currently written.

• For SP 10950, the Far West Agribusiness Association, the Fertilizer Institute, and Dusty Farm Co-Op support the rulemaking, but recommend that we expand the current 50 air mile radius to a 100 air mile radius for consistency with the Federal Motor Carrier Safety Administration's (FMCSA) regulations. This rulemaking addresses incorporating special permits as currently written.

• For SP 13554, Trinity Containers requested that, for nurse tanks, a percentage of the actual material thickness or five percent be used for the head and shell minimum thickness allowance. ARA stated that when SP 13554 was originally granted, the specifications of older nurse tanks were used to determine a minimum head and body thickness for a tank to pass the thickness test. The commenter stated that, currently, nurse tanks are built with a different diameter and grade of material, which allows the tanks to be built thinner than previously built, yet still conform to the ASME Code standards. The result is that many new nurse tanks do not meet the thickness thresholds in SP 13554 due to improved engineering. American Welding and Tank LLC stated that PHMSA should take into consideration the ASME Code thickness changes throughout the years applicable to one thickness for heads and one for shells. The commenter states that the head and shell minimum thickness allowance does not consider the tank diameter or the edition of the ASME Code in effect when the tanks were manufactured. American Welding requests that we incorporate an allowable reduction material thickness based on the actual thickness of the tank. This rulemaking addresses incorporating special permits as currently written.

• Under its SP 13554 comments, ATA recommends that PHMSA incorporate standards that are available free of charge. No new standards were proposed to be incorporated into the HMR, nor adopted in this final rule. The free-of-charge comment is beyond the scope of this rulemaking.

• Fisk Tank Carrier requested that we add the provisions of a seventh special permit, SP 14980, which authorizes the one-way transportation in commerce of liquefied petroleum gas (LPG) in certain non-DOT specification storage tanks by private carrier motor vehicle.

• NFPA suggested that we incorporate by reference the 2011 edition of the NFPA 58 that was published in September of 2010. If not possible due to time constraints, they recommend that we adopt the 2008 edition.

• NTTC objected to PHMSA incorporating by reference materials that are prepared by third party private entities when the material is not made publicly available to the regulated industry.

• The Fertilizer Institute requested that we address a petition for rulemaking that they previously submitted and that requested PHMSA to require the testing of all nurse tanks

regardless of illegible identification plates. The petition will be addressed in a separate future rulemaking.

III. Discussion of Amendments and Applicable Comments

The six special permits addressed in this final rule that authorize cargo tank transportation operations not specifically permitted under the HMR were initially issued to members of industry associations or similar organizations. They have well-established safety records and therefore PHMSA has determined that they are excellent candidates for incorporation into the HMR. Incorporating these special permits into the HMR will eliminate the need for over 10,000 current grantees to reapply for the renewal of six special permits every four years and for PHMSA to process the renewal applications, thereby eliminating a significant paperwork burden both on industry and the government.

A discussion of incorporating the provisions of six special permits into the HMR and their applicable comments follows below. As discussed earlier in this preamble, most of the commenters are supportive of this rulemaking. Those comments that are within the scope of this rulemaking are discussed below.

The Fertilizer Institute pointed out that in the NPRM's preamble, we reversed the paragraph numbers in the preamble from the regulatory text for § 173.315(m)(2) and (m)(3). The NPRM's preamble error is noted. The regulatory text was correct in the proposed regulatory text, and the preamble discussion in this final rule reflects the correction of the printing error.

Lisa Anderson is opposed to incorporating some of the proposed special permits because she contends that they do not provide an equivalent level of safety as cargo tanks tested under the current requirements in Part 180 of the HMR. As discussed in the preambles of the NPRM and this final rule, we chose the six permits addressed in this rulemaking precisely because of their demonstrated safety records. Although the comment is duly noted, we do suggest that the commenter submit a petition for rulemaking.

A. Moveable Fuel Storage Tenders

SP 11209 authorizes the transportation of LPG in non-DOT specification cargo tank motor vehicles, commonly known as moveable fuel storage tenders, used exclusively for agricultural purposes. Moveable fuel storage tenders are used to supply LPG fuel to farmers for crop drying, crop irrigation, flame weeding, plant defoliation prior to harvest, and other agricultural operations.

This special permit has been in effect since 1994 and has been utilized by over 3,400 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit over the past ten years. Each vehicle operated under this special permit conforms to the ASME Code in effect at the time of its manufacture. Provisions governing the design and use of these vehicles are included in NFPA 58, Liquefied Petroleum Gas Code.

Mr. James T. Osterhaus, NPGA, CHS Inc., and CHS Agri Service Center, submitted the following comments (*see* their full comments at *http://www.regulations.gov*). James Osterhaus took issue with the following sentence from the preamble text of the NPRM: "In addition, transportation of a moveable fuel storage tender to an LPG distribution facility for re-filling would be permitted only if it contains no more than five percent of its water capacity." Mr. Osterhaus is correct that this sentence could be misleading because moveable fuel storage tenders are not permitted to be "refilled" at any location except the point of use. However, we believe that proposed § 173.5(d)(9), taken from the special permit, is clear: "Transportation of the movable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized *only if the cargo tank contains no more than five percent of its water capacity*." Mr. Osterhaus suggests that we add the following language for clarity, "A movable fuel storage tender may only be filled at the consumer's premises or point of use. Transportation of a moveable fuel storage tender containing more than five percent of its water capacity from a liquefied distribution facility to a consumer's premises or point of use is prohibited." We agree that the first sentence of Mr. Osterhaus' suggestion would ensure clarity, and we have added it to § 173.5(d)(9). We believe the addition of the second sentence would be redundant.

The National Fire Protection Association (NFPA) recommends that we revise "NFPA Pamphlet 58" to read more correctly as "NFPA 58, Liquefied Petroleum Gas Code." We agree and have made the correction each place it appears in this rulemaking (§§ 173.5 and 173.315 for SP 11209 and SP 13554, respectively). NFPA also recommends that we incorporate a more current edition of this Code into the HMR (*see* Beyond-the-Scope comments in Section II of this preamble).

Additionally, NFPA suggests that we revise the regulatory text for incorporating SP 11209 into § 173.5 by removing paragraphs (d)(1), (d)(2), (d)(3) and (d)(6) because the paragraphs duplicate the requirements in NFPA 58, Liquefied Petroleum Gas Code. We disagree with NFPA. We believe that deleting these paragraphs from the HMR is unnecessary and that the inclusion of the paragraphs provides a user-friendly aspect to this section. We are, therefore, leaving the paragraphs in place.

This final rule incorporates the terms of SP 11209 into the HMR as proposed in the NPRM with the exception of the addition of the following sentence to § 173.5(d)(9) for clarification: "A movable fuel storage tender may only be filled at the consumer's premises or point of use." PHMSA is amending § 173.5 to authorize the transportation of LPG in moveable fuel storage tenders used exclusively for agricultural purposes and operated by a private motor carrier. (A "private motor carrier," as defined in interpretation letters issued by PHMSA, is a carrier who transports the business's own products and does not provide such transportation service to other businesses). As proposed in the NPRM, a non-DOT specification cargo tank motor vehicle used as a moveable fuel storage tender must: (1) Have a minimum design pressure of 250 psig; (2) conform to the requirements of the ASME Code in effect at the time the cargo tank was manufactured and marked accordingly; (3) have a water capacity of 1,200 gallons or less; (4) conform to applicable requirements in NFPA 58, Liquefied Petroleum Gas Code; and (5) be mounted securely on a motor vehicle. In addition, the cargo tank must be filled as prescribed in § 173.315(b). When filled, transportation of a moveable fuel storage tender would be limited to movements over local roads between fields using the shortest practical distance. In addition, transportation of a moveable storage fuel tender to a moveable fuel storage tender facility would be permitted only if it contains no more than five percent of its water capacity.

B. Liquid Soil Pesticide Fumigants

SP 13113 authorizes the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used exclusively for agricultural purposes. Liquid soil pesticide fumigants are used by farmers as an alternative to the agricultural use of methyl bromide to ensure the adequate protection of crops from pest infestation and to preserve agricultural

productivity. Transportation of these materials is limited to private motor carriage and must be between a bulk loading facility and farms (including between farms) not exceeding 150 miles from one another.

This special permit has been in effect since 2002 and has been utilized by hundreds of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 2002, when this material was classed as Dichloropropenes, 6.1, UN2047, PG III, it was routinely shipped, in accordance with § 173.242, in MC 306 and DOT 406 cargo tanks and DOT 57 portable tanks. The same tanks have been widely used to transport gasoline, a low flashpoint PG II liquid. The pressure relief systems and bottom discharge equipment on the cargo tanks offer equivalent safety in terms of containment and operation of pressure relief systems. Also, stainless steel DOT 57 portable tanks provide comparable containment to metal, rigid plastic, and composite Intermediate Bulk Containers (IBCs), which are authorized for transport of Division 6.1 liquid soil pesticide fumigants under § 173.202.

PHMSA is incorporating the terms of SP 13113 into the HMR by amending § 173.5. MC 306 and DOT 406 cargo tank motor vehicles used for the transportation of these fumigants must: (1) meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180; and (2) conform to the pressure relief system requirements specified in § 173.243(b)(1). In addition, MC 306 cargo tank motor vehicles must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and DOT 406 cargo tanks must conform to the bottom outlet requirements specified in § 173.243(b)(2). DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be constructed of stainless steel.

C. Non-DOT Specification Cargo Tanks Used for Roadway Striping

SP 12284 authorizes the transportation in commerce of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks. These non-DOT specification cargo tanks are used for the low hazard job of applying roadway striping to paved roads throughout the United States.

This special permit has been in effect since 1999 and has been utilized by over 100 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Based on this safety record, PHMSA is incorporating the provisions of SP 12284 into the HMR by adding a new paragraph (c) to § 173.5a to authorize the transportation of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks provided the conditions specified in the new paragraph are met. The new paragraph (c) specifies conditions that include packaging specifications, inspection and testing requirements, requirements for maintaining records, and operational controls. Consistent with the special permit, paragraph (c) includes certain/special marking requirements that are in addition to the applicable marking and placarding requirements in subparts D and F. The section title heading is also revised to reflect the addition of non-DOT specification cargo tanks used for roadway striping into this section. Finally, § 173.242(b) is revised to include the authorization to use non-DOT specification cargo tanks used for roadway striping.

D. LPG Storage Containers

SP 13341 authorizes the transportation by private motor carrier of LPG in consumer storage containers in quantities greater than five percent of the container's water capacity. The storage containers designated in the special permit are designed for permanent installation on consumer premises. The special permit authorizes one-way transportation only, from the consumer location to the container owner's nearest LPG plant.

This special permit has been in effect since 2004 and has been utilized by several thousand grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 1998, consumer storage containers filled with LPG to greater than five percent water capacity were routinely transported without any known incidents. The prohibition of transporting containers filled to more than five percent water capacity resulted from concern of the potential for confusion between ASME and DOT tanks, as ASME tanks are not designed to be lifted by the lugs with product inside. This final rule requires lifting with slings, not by the lugs. Also, transporting a tank with some product is sometimes preferable from a safety standpoint than removing LPG from a tank at a residence. NPGA, CHS Inc., and CHS Agri Service Center offered additional safety and efficiency information concerning this special permit in their comments (*see* their comments at *http://www.regulations.gov*).

PHMSA is incorporating the terms of SP 13341 into the HMR by revising § 173.315(j) to authorize the transportation of LPG in consumer storage containers in quantities greater than five percent of the container's water capacity. The storage container must have a water capacity not exceeding 500 gallons and be ASME "U" stamped to indicate that it was designed and constructed in accordance with ASME Code requirements. In addition, the container must be inspected for leaks, corroded or abraded areas, dents, weld distortions, or any other conditions that could make the container unsafe for transportation. PHMSA is also requiring that: (1) Only one storage container be transported at one time on a motor vehicle; (2) the storage container be lifted by slings, not by lifting lugs; and (3) the storage container be loaded and secured on the motor vehicle so that the container is well-secured against movement and completely within the envelope of the vehicle. Finally, transportation is limited to one-way movement from the consumer's premises to the container owner's nearest facility.

E. Nurse Tanks

Nurse tanks are non-DOT specification cargo tanks used to transport and apply anhydrous ammonia fertilizers. The HMR authorize the use of nurse tanks operated by private motor carriers exclusively for agricultural purposes provided that the nurse tank: (1) Has a minimum design pressure of 250 psig and meets the requirements of Section VIII of the ASME code in effect at the time the nurse tank was manufactured; (2) is equipped with pressure relief valves; (3) has a capacity of 3,000 gallons or less; (4) is loaded to a filling density no greater than 56 percent; and (5) is securely mounted on a farm wagon. Because they are non-DOT specification containers, nurse tanks that are not operating under a special permit are not subject to periodic inspection, testing, or requalification requirements.

Nurse tanks mounted on field trucks. SP 10950 authorizes the use of a nurse tank securely mounted on a field truck. Field trucks are specifically designed and equipped to improve safety and efficiency by being more maneuverable and more stable than a farm wagon when moving over hilly terrain. A definition for field trucks is specified in § 173.315 as new paragraph (m)(3)(iv). These trucks are operated in remote

rural areas in eastern Washington, Oregon, and northern Idaho within a short distance of the fertilizer distribution point. The special permit has been in effect since 1993 and has been utilized by over one hundred grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Tanks operated under this special permit are subject to the periodic testing requirements under Subpart E of Part 180.

The American Trucking Associations (ATA) supports the incorporation of the provisions in SP 10950 into the HMR. However, the organization requests that registration be a requirement, stating that PHMSA would lose the ability to track transporters of anhydrous ammonia and other hazardous materials without such a requirement, thereby losing its ability to quantify safety performance, collect data, initiate investigations and pursue enforcement actions. We believe ATA misread SP 10590 as excepting the permit holder from registration requirements. This is not the case. The special permit specifically states in Item 11, third bullet, that the permit holders must comply with the registration requirements.

For SP 10950 provisions, ATA also requested that we incorporate an exception from the security plan requirements "similar to the exemption afforded to users of anhydrous ammonia nurse tanks." If ATA is referring to SP 13554, Item 11, second bullet, that provision specifically requires conformance to the security plan requirements. Users of SP 13554 were not excepted from security requirements, and as stated earlier in this preamble, we are not deviating from the current special permit provisions in this rulemaking. Therefore, the security plan requirements in Subpart I of Part 172 will remain applicable to nurse tanks mounted on field trucks. PHMSA is incorporating the provisions of SP 10950 into the HMR by adding a new paragraph (m)(3) to § 173.315.

Nurse tanks with missing or illegible ASME plates. As indicated above, nurse tanks must be manufactured in accordance with the applicable ASME Code requirements in effect at the time of manufacture. The ASME Code requires tanks built to its specifications to have an attached plate that lists the manufacturer, maximum allowable working pressure, minimum design metal temperature, and the year of manufacture. A number of nurse tanks are missing the required ASME plates or have illegible ASME plates. SP 13554 permits the continued use in anhydrous ammonia service of nurse tanks with missing or illegible ASME plates provided the tanks are inspected and tested. Specifically, the tanks must undergo an external visual inspection and testing using the procedures specified in § 180.407(d), a thickness test using the procedures specified in § 180.407(i), and a pressure test using the procedures specified in § 180.407(g). The special permit also establishes minimum head and shell thickness, and nurse tanks not meeting those levels must be removed from service. Nurse tanks that pass the above-described tests must be marked with a unique owner's identification number and must pass the same tests at least every five years to remain in service.

We received a comment from ATA under SP 13554 which stated concern "over PHMSA's incorporation of industry consensus standards into the HMR where such standards are developed without the benefit of formal rulemaking and where such standards are not provided to the public free of charge. This pay-to-play system of developing regulatory standards raises questions under the Administrative Procedures Act (5 U.S.C. 500 *et seq.*), which requires agencies to provide interested persons with notice and an opportunity to participate in the rulemaking process." The commenter continued, "To cure this defect, PHMSA should first publish the industry standard in the **Federal Register** and solicit comments on it prior to its incorporation in the HMR." PHMSA is not adopting any new standards in this final rule, as the Section VIII of the ASME Code was previously incorporated by reference into the HMR.

This special permit has been in effect since 2004 and has been utilized by thousands of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Although 49 CFR 173.315(m) requires that a nurse tank "meet the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured and is marked accordingly," if the plate is missing or illegible the nurse tank cannot be used. Therefore, these additional requirements that nurse tanks operating under the special permit must follow (*i.e.,* the thickness testing, the pressure testing, and the external visual inspection), provide information about condition of the tank to ensure for the safe continued use of these tanks.

In this final rule, PHMSA is incorporating the terms of SP 13554 into the HMR by adding a new paragraph (m)(2) in § 173.315. Existing nurse tanks with missing or illegible ASME plates that successfully pass the required inspections and tests and are marked with a unique identifier are authorized to remain in service.

In Summary

Based on the above discussion, this final rule amends the HMR by incorporating the provisions contained in six widely used and longstanding cargo tank special permits that, in summary, will provide the following:

- Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes (SP 11209).
- Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT Specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks, used exclusively for agricultural purposes (SP 13113).
- Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks (SP 12884).
- Authorization for private motor carriers to transport LPG in consumer storage containers in quantities greater than five percent of the container's water capacity (SP 13341).
- Authorization to transport nurse tanks securely mounted on field trucks (SP 10950).
- Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions (SP 13554).

Additionally, in § 171.7, we are revising the entry, American Society of Mechanical Engineers (ASME) and the National Fire Protection Association (NFPA) to reflect the addition of the incorporated by reference materials to the applicable adopted regulatory text.

In § 173.23, we are redesignating current paragraph (h) as new paragraph (i) and adding a provision to new paragraph (h) that authorizes packagings permanently marked with a special permit number for which the provisions of the special permit were incorporated into the HMR to continue to be used for the life of the packagings without removing or obliterating the special permit markings. This provision will serve to avoid imposing the burden of requiring the removal from service of such packagings while the markings are removed or obliterated.

Finally, in § 173.242, we are revising paragraph (b) to reflect the authorization of non-DOT specification cargo tanks used for roadway striping.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue special permits, which exempt a person transporting a hazardous material, or a person causing a hazardous material to be transported, from a regulation promulgated under 49 U.S.C. 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law. The conditions or "safety control measures" of each special permit must ensure that the action performed pursuant to the special permit achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. This final rule will amend the regulations by incorporating provisions from certain widely used and longstanding special permits that have established a history of safety.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) and was therefore not reviewed by the Office of Management and Budget (OMB). The rulemaking is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation (44 FR 11034).

In this final rule, PHMSA is amending the HMR by incorporating alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the provisions in this NPRM will reduce the paperwork burden on industry and this agency caused by continued renewals of special permits. The provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule will preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at 49 U.S.C. § 5125(b)(2) that, if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, I certify this rulemaking will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

F. Paperwork Reduction Act

This final rule does not impose new information collection requirements. PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements," currently being reviewed for renewal by OMB. This final rule may result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to the revisions to incorporate provisions contained in certain widely used or longstanding special permits that have established safety records.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an

opportunity to comment on information and recordkeeping requests.

PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden in this final rule would be decreased as follows:

OMB Control No. 2137–0051:

Decrease in Annual Number of Respondents: 185.

Decrease in Annual Responses: 185.

Decrease in Annual Burden Hours: 185.

Decrease in Annual Burden Costs: $7,400.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying hazards and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene.

In this final rule, PHMSA is incorporating the terms of six special permits into the HMR. Several of the proposals in this NPRM involve the transportation of LPG. LPG is a Division 2.1 (flammable gas) material that poses an explosive, fire, blast, or projection hazard. If released, LPG may cause eye or skin irritation and, if inhaled, it may irritate the respiratory tract. Moderate exposure may cause headache or dizziness. Elevated exposure may cause unconsciousness or respiratory arrest. Further, by diluting the oxygen concentration in air below the level necessary to support life, LPG can act as an asphyxiant. LPG is not known to cause long-term ecological damage. The provisions in this final rule are intended to ensure that LPG will be transported in a variety of applications with no release from its packaging and, thus, no adverse safety or environmental impacts.

One of the provisions in this final rule involves Division 6.1 liquid soil pesticide fumigants. Soil fumigation is a chemical control strategy used independently or in conjunction with cultural and physical control methods to reduce populations of soil organisms. Soil fumigants can effectively control soil-borne organisms, such as nematodes, fungi, bacteria, insects, weed seeds, and weeds. Different fumigants have varying effects on the control of these pests. Some are pest-specific, while others are broad spectrum biocides that kill most soil organisms. Soil fumigants are used in agriculture, nurseries, ornamental beddings, forest systems, and other areas where soil-borne pests can harm or devastate desirable plants. Because of treatment costs, applicators use soil fumigants primarily on high value crops, such as vegetables, fruits, and ornamentals. Control of soil-borne pests increases plant aesthetics, plant quality and vigor, crop yields, and ultimately profitability. Soil fumigants are closely regulated by the Environmental Protection Agency to prevent adverse health impacts to agricultural workers or bystanders (people who live, work, or otherwise spend time near fields that are fumigated). This final rule will help to ensure that liquid soil pesticide fumigants are transported without incident on or between farms and the bulk loading facility.

Several provisions in this final rule address the transportation of anhydrous ammonia. Anhydrous ammonia is a poisonous by inhalation (PIH) material. When anhydrous ammonia is released into water, it floats on the surface, rapidly dissolving into the water as ammonium hydroxide while simultaneously boiling into the atmosphere as gaseous ammonia. High concentrations of ammonia (greater than 1700 parts per million (ppm)) in the atmosphere cause compulsive coughing and death, while lower concentrations (lower than 700 ppm) cause eye and throat irritation. Ammonia is lighter than air so that it dissipates in the atmosphere, the rate of dissipation depending on weather and wind conditions.

In an aquatic or wetland environment, ammonium hydroxide would cause fish, planktonic, and benthic organism mortality in the vicinity of the release, the amount depending on the volume of anhydrous ammonia released. The

chemical would also strip protective oils from the feathers of shore birds, causing drowning or infection. Such die-offs could spur high nutrient levels that could stimulate noxious blooms of algae. Terrestrial vegetation would also be either damaged or killed, depending on atmospheric concentrations.

The cleanup effort from a release of anhydrous ammonia would require the removal of soil containing anhydrous ammonia quickly to avoid contamination of the water table. Ammonia emissions would be released during the cleanup effort as contaminated soil is disturbed.

The provisions in this final rule will require certain nurse tanks used to transport anhydrous ammonia to, from, and between farm fields to be inspected and tested periodically to identify problems that could result in a leak or release.

There are no significant environmental impacts associated with the provisions in this final rule. In the NPRM, PHMSA specifically solicited comments on the potential environmental impacts of adopting the provisions of the six special permits, and none were received. The process through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of special permits as regulations of general applicability maintains the existing environmental protections built into the HMR. In addition, the provisions applicable to nurse tanks will enhance the integrity of those tanks, thereby reducing the possibility of an anhydrous ammonia release.

J. Privacy Act

Anyone is able to search the electronic form of all comments and written communications received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or at *http://www.regulations.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.7, in the paragraph (a)(3) table, in the second column, "49 CFR reference," under the entry, *National Fire Protection Association,* the entry "NFPA 58—Liquefied Petroleum Gas Code, 2001 Edition" is amended by adding the section "173.5" in appropriate numerical order.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. In § 173.5, paragraphs (d), (e), and (f) are redesignated as paragraphs (f), (g) and (h) respectively, and new paragraphs (d) and (e) are added to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(d) *Moveable fuel storage tenders.* A non-DOT specification cargo tank motor vehicle may be used to transport Liquefied petroleum gas, UN1075, including Propane, UN1978, as moveable fuel storage tender used exclusively for agricultural purposes when operated by a private carrier under the following conditions:

(1) The cargo tank must have a minimum design pressure of 250 psig.

(2) The cargo tank must meet the requirements of the HMR in effect at the time of its manufacture and must be marked accordingly. For questions regarding these requirements, contact PHMSA by either:

(i) Telephone (800) 467–4922 or (202) 366–4488 (local); or

(ii) By electronic mail (e-mail) to: *infocntr@dot.gov.*

(3) The cargo tank must have a water capacity of 1,200 gallons or less.

(4) The cargo tank must conform to applicable requirements in National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code (IBR, see § 171.7 of this subchapter).

(5) The cargo tank must be securely mounted on a motor vehicle.

(6) The cargo tank must be filled in accordance with § 173.315(b) for liquefied petroleum gas.

(7) The cargo tank must be painted white, aluminum, or other light-reflecting color.

(8) Transportation of the filled moveable fuel storage tender is limited to movements over local roads between fields using the shortest practical distance.

(9) Transportation of the moveable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized only if the cargo tank contains no more than five percent of its water capacity. A movable fuel storage tender may only be filled at the consumer's premises or point of use.

(e) *Liquid soil pesticide fumigants.* MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks may be used to transport liquid soil pesticide fumigants, Pesticides, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C,* 6.1, UN2903, PG II, exclusively for agricultural operations by a private motor carrier between a bulk loading facility and a farm (including between farms). However, transportation is not to exceed 150 miles between the loading facility and the farm, and not more than five days are permitted for intermediate stops for temporary storage. Additionally, transport is permitted only under the following conditions:

(1) *Cargo tanks.* MC 306 and DOT 406 cargo tank motor vehicles must:

(i) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180 of this subchapter;

(ii) Conform to the pressure relief system requirements specified in § 173.243(b)(1);

(iii) For MC 306 cargo tanks, be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and

(iv) For DOT 406 cargo tanks, conform to the bottom outlet requirements specified in § 173.243(b)(2).

(2) *Portable tanks.* DOT 57 portable tanks must—

(i) Be constructed of stainless steel; and

(ii) Meet qualification and maintenance requirements of Subpart G of Part 180 of this subchapter.

* * * * *

■ 5. In § 173.5a, the section heading is revised and new paragraph (c) is added to read as follows:

§ 173.5a Oilfield service vehicles, mechanical displacement meter provers, and roadway striping vehicles exceptions.

* * * * *

(c) *Roadway striping.* In addition to conformance with all other applicable requirements of this subchapter, non-DOT specification cargo tanks used for roadway striping are authorized provided all the following conditions in this paragraph (c) are met.

(1) *Authorized materials.* Only the hazardous materials listed in the table below may be transported in roadway striping vehicles. Cargo tanks may not be filled to a capacity that would be greater than liquid full at 130 °F.

HAZARDOUS MATERIALS DESCRIPTION

Proper shipping name	Hazard class/ division	Identification number	Packing group
Adhesives, *containing a flammable liquid*	3	UN1133	II
Paint *including paint, lacquer, enamel, stain, shellac solution, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	II
Paint related material *including paint thinning drying, removing, or reducing compound*	3	UN1263	II
Flammable liquids, n.o.s.[a]	3	UN1993	II
Gasoline	3	UN1203	II
Acetone[b]	3	UN1090	II
Dichloromethane[b]	6.1	UN1593	III
Ethyl methyl ketone or Methyl ethyl ketone[b]	3	UN1193	II
Ethyl acetate[b]	3	UN1173	II
Methanol[b]	3	UN1230	II
Organic peroxide type E, liquid (Dibenzoyl peroxide)[c]	5.2	UN3107	II
Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s.[b]	3	UN1268	III
1,1,1-Trichloroethane[b]	6.1	UN2831	III
Toluene[b]	3	UN1294	II
Xylenes[b]	3	UN1307	II, III
Environmentally hazardous substance, liquid, n.o.s.[c]	9	UN3082	III
Corrosive liquid, basic, organic, n.o.s.[c]	8	UN3267	III
Corrosive liquids, n.o.s.[c]	8	UN1760	III
Elevated temperature liquid, n.o.s., *at or above 100 °C and below its flash point (including molten metals, molten salts, etc.)*[d].	9	UN3257	III

[a]: Adhesive containing ethyl acetate.
[b]: Solvent.
[c]: Catalyst.
[d]: Thermoplastic material non-hazardous at room temperature.

(2) *Cargo tank requirements.* Each non-DOT specification cargo tank used for roadway striping must be securely bolted to a motor vehicle and must—

(i) Be constructed and certified in conformance with the HMR in effect at the time of its manufacture and must be marked accordingly. For questions regarding these requirements, contact PHMSA by either: (1) Telephone (800) 467–4922 or (202) 366–4488 (local); or (2) by electronic mail (e-mail) to: *infocntr@dot.gov*;

(ii) Have a minimum design pressure of 100 psig;

(iii) Have a maximum capacity of 500 gallons;

(iv) For solvents and organic peroxides, the cargo tank may not contain more than 50 gallons;

(v) Be given an external visual inspection prior to each use to ensure that it has not been damaged on the previous trip;

(vi) Be retested and reinspected in accordance with § 180.407(c) of this subchapter as specified for an MC 331 cargo tank motor vehicle; and

(vii) Be securely mounted to a motor vehicle in accordance with the securement provisions prescribed in §§ 393.100 through 393.106 of this title.

(3) *Test records.* The owner or operator of the roadway striping vehicle must maintain hydrostatic test records in accordance with § 180.417(b) and must make those records available to any representative of the Department of Transportation upon request.

(4) *Marking.* A non-DOT specification cargo tank used for roadway striping must be plainly marked on both sides near the middle in letters at least two inches in height on a contrasting background "ROADWAY STRIPING".

(5) *Operational controls.* A non-DOT specification cargo tank used for roadway striping may not be pressurized when the motor vehicle is traveling to and from job sites. Additionally, the distance traveled by a non-DOT specification cargo tank used for roadway striping may not exceed 750 miles. Thermoplastic resin may only be heated during roadway striping operations.

■ 6. In § 173.23, paragraph (h) is redesignated as paragraph (i) and new paragraph (h) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(h) A packaging that is permanently marked with a special permit number, "DOT–SP" or "DOT–E," for which the provisions of the special permit have been incorporated into this subchapter may continue to be used for the life of the packaging without obliterating or otherwise removing the special permit number.

* * * * *

■ 7. In § 173.242, the introductory text in paragraph (b) is revised to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(b) *Cargo tanks:* Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311,

MC 312, MC 330, MC 331, DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles; and non-DOT specification cargo tank motor vehicles when in compliance with § 173.5a(c). Cargo tanks used to transport Class 3, Packing Group I or II, or Packing Group III with a flash point of less than 38 °C (100 °F); Class 6, Packing Group I or II; and Class 8, Packing Group I or II materials must conform to the following special requirements:

* * * * *

■ 8. In § 173.315, paragraphs (j) and (m) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) *Consumer storage containers.* (1) Storage containers for liquefied petroleum gas or propane charged to five percent of their capacity or less and intended for permanent installation on consumer premises may be shipped by private motor carrier under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) and must be marked to indicate compliance in the manner specified by the respective Code. Containers built in compliance with earlier editions starting with 1943 are authorized.

(ii) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58, Liquefied Petroleum Gas Code (IBR, see § 171.7 of this subchapter).

(iii) The containers must be braced or otherwise secured on the vehicle to prevent relative motion while in transit. Valves or other fittings must be adequately protected against damage during transportation. (See § 177.834(a) of this subchapter).

(2) Storage containers with a water capacity not exceeding 500 gallons charged with liquefied petroleum gas to more than five percent of their capacity and intended for permanent installation on consumer premises may be transported by private motor carrier one-way only from the consumer's premises to the container owner's nearest facility under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code and must be marked to indicate compliance in the manner specified by the respective Code.

(ii) Maximum permitted filling density may not exceed that specified in paragraph (b) of this section.

(iii) Prior to loading on a motor vehicle, the container must be inspected by a trained and qualified person for leaks, corroded or abraded areas, dents, distortions, weld defects, or other condition that may render the container unsafe for transportation. A record of the inspection must be legibly signed and dated by the person performing the inspection and retained by the container owner for two years. The signature on the inspection record represents a certification that the container has been inspected and has no defects that would render it unsafe for transportation under the HMR. The record of inspection must include the date of inspection, the inspector's contact information (such as a telephone number), the container's serial number and container size (water capacity), estimated amount of hazardous material, and the origin and destination of shipment.

(iv) Only one storage container may be transported on a motor vehicle.

(v) For loading on a motor vehicle, the container must be lifted by slings, which must be completely wrapped around the container. Lifting lugs may not be used. The slings must be rated to a weight sufficient to accommodate the container and its lading and shall comply with ASME B30.9 on slings used for lifting purposes, and must be visually inspected prior to each use. A sling showing evidence of tears, fraying, or other signs of excessive wear may not be used.

(vi) The storage container must be secured on a motor vehicle so that the container is completely within the envelope of the vehicle and does not extend beyond the vehicle frame.

(vii) The storage container must be placed on the vehicle in a manner, such as in a cradle, which ensures that no weight is placed on the supporting legs during transportation.

(viii) The storage container must be secured against movement during transportation. Bracing must conform with the requirements of paragraph (j)(1)(iii) of this section and § 177.834(a) of this subchapter and with Section 6–5.2 of NFPA 58, Liquefied Petroleum Gas Code. Straps or chains used as tie-downs must be rated to exceed the maximum load to be transported and conform to the requirements in §§ 393.100 through 393.106 of this title.

(ix) Tow trailers used to transport storage containers in accordance with this paragraph (j)(2) must provide rear end protection that conforms to requirements in § 393.86 of this title.

(3) Storage containers of less than 1,042 pounds water capacity (125 gallons) may be shipped when charged with liquefied petroleum gas in compliance with DOT filling density.

* * * * *

(m) *General.* (1) A cargo tank that is commonly known as a nurse tank and considered an implement of husbandry transporting anhydrous ammonia and operated by a private motor carrier exclusively for agricultural purposes is excepted from the specification requirements of part 178 of this subchapter if it:

(i) Has a minimum design pressure of 250 psig, meets the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured, and is marked with a valid ASME plate.

(ii) Is equipped with pressure relief valves meeting the requirements of CGA Standard S–1.2 (IBR, see § 171.7 of this subchapter);

(iii) Is painted white or aluminum;

(iv) Has a capacity of 3,000 gallons or less;

(v) Is loaded to a filling density no greater than 56 percent;

(vi) Is securely mounted on a farm wagon or meets paragraph (m)(3) of this section; and

(vii) Is in conformance with the requirements of part 172 of this subchapter except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

(2) *Nurse tanks with missing or illegible ASME plates.* Nurse tanks with missing or illegible ASME plates may continue to be operated provided they conform to the following requirements:

(i) Each nurse tank must undergo an external visual inspection and testing in accordance with § 180.407(d) of this subchapter.

(ii) Each nurse tank must be thickness tested in accordance with § 180.407(i) of this subchapter. A nurse tank with a capacity of less than 1,500 gallons must have a minimum head thickness of 0.203 inch and a minimum shell thickness of 0.239 inch. A nurse tank with a capacity of 1,500 gallons or more must have a minimum thickness of 0.250 inch. Any nurse tank with a thickness test reading of less than that specified in this paragraph at any point must be removed from hazardous materials service.

(iii) Each nurse tank must be pressure tested in accordance with § 180.407(g) of this subchapter. The minimum test pressure is 375 psig. Pneumatic testing is not authorized.

(iv) Each nurse tank must be inspected and tested by a person

meeting the requirements of § 180.409(d) of this subchapter. Furthermore, each nurse tank must have the tests performed at least once every five years after the completion of the initial tests.

(v) After each nurse tank has successfully passed the visual, thickness, and pressure tests, welded repairs on the tank are prohibited.

(vi) After the nurse tank has successfully passed the visual, thickness, and pressure tests, it must be marked in accordance with § 180.415(b), and permanently marked near the test and inspection markings with a unique owner's identification number in letters and numbers at least ½ inch in height and width.

(vii) Each nurse tank owner must maintain a copy of the test inspection report prepared by the inspector. The test report must contain the results of the test and meet the requirements in § 180.417(b) and be made available to a DOT representative upon request.

(3) *Field truck mounted tanks.* A non-DOT specification cargo tank (nurse tank) securely mounted on a field truck is authorized under the following conditions:

(i) The tank is in conformance with all the requirements of paragraph (m)(1) of this section, except that the requirement in paragraph (m)(1)(vi) does not apply;

(ii) The tank is inspected and tested in accordance with subpart E of part 180 of this subchapter as specified for an MC 331 cargo tank;

(iii) The tank is restricted to rural roads in areas within 50 miles of the fertilizer distribution point where the nurse tank is loaded; and

(iv) For the purposes of this section, a field truck means a vehicle on which a nurse tank is mounted that is designed to withstand off-road driving on hilly terrain. Specifically, the vehicle must be outfitted with stiffer suspension (for example, additional springs or airbags) than would be necessary for a comparable on-road vehicle, a rear axle ratio that provides greater low end torque, and a braking system and tires designed to ensure stability in hilly terrain. The field truck must have low annual over-the-road mileage and be used exclusively for agricultural purposes.

* * * * *

Issued in Washington, DC, on January 13, 2011 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–2014 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 191, 192

[Docket No. PHMSA–RSPA–2004–19854, Amdt. Nos. 191–22; Amdt. 192–116]

RIN 2137–AE60

Pipeline Safety: Mechanical Fitting Failure Reporting Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule is an amendment to PHMSA's regulations involving DIMP. This final rule revises the pipeline safety regulations to clarify the types of pipeline fittings involved in the compression coupling failure information collection; changes the term "compression coupling" to "mechanical fitting," aligns a threat category with the annual report; and clarifies the Excess Flow Valve (EFV) metric to be reported by operators of gas systems. This rule also announces the OMB approval of the revised Distribution Annual Report and a new Mechanical Fitting Failure Report. Finally, this rulemaking clarifies the key dates for the collection and submission of the new Mechanical Fitting Failure Report.

DATES: This final rule takes effect April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at 202–366–4571 or by e-mail at *Mike.Israni@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The DIMP Notice of Proposed Rulemaking (NPRM) published on June 25, 2008, (73 FR 36015, 36033), included a proposed provision for operators to report "each material failure of plastic pipe (including fittings, couplings, valves and joints)." In the DIMP final rule published on December 4, 2009, (74 FR 63906) PHMSA deleted the proposed requirement to report plastic pipe failures but retained the requirement to report failures of couplings used in plastic pipe and proposed extending the reporting requirement to include failures of couplings used in metal pipe. The final rule also required operators to collect compression coupling failure information beginning January 1, 2010, and report the failures annually on the Annual Report Form by March 15, 2011. PHMSA used the DIMP final rule to open up a 30-day comment period to invite public comment on the proposal to extend the reporting requirement to include the failure of couplings used in metal pipe. Comments were due by January 4, 2010. On December 31, 2009, (74 FR 69286) PHMSA extended the comment period to February 4, 2010, as requested by the American Gas Association. As a result of the comments received, PHMSA decided to revise the provisions relative to compression couplings as detailed in the comment summary below.

PHMSA also used the DIMP final rule to solicit comments on the revised Gas Distribution Annual Report. The revisions to the report were primarily made to incorporate the performance measures for the Gas Distribution Integrity Management Program. To comply with the PRA requirements, PHMSA issued a 60-day comment period with comments due by February 4, 2010, to allow for comments on the proposed revisions. Once the comment period passed, PHMSA reviewed the comments and made adjustments to the Gas Distribution Annual Report. To gather further input on the proposed revisions, PHMSA published another **Federal Register** notice on June 28, 2010, (75 FR 36615) with comments due by July 28, 2010.

PHMSA is issuing this rule to address the comments received on the notices detailed above and modify the pipeline safety regulations. In response to comments and as discussed below in more detail, PHMSA is changing the term "Compression Coupling" to "Mechanical Fitting" and providing a definition for "Mechanical Fitting." PHMSA is also using this rule to announce the revisions to the Gas Distribution Annual Report Form (PHMSA F–7100.1–1). The revisions include moving the collection of mechanical fitting failure information to the new Gas Distribution Mechanical Fitting Failure Form (PHMSA F–7100.1–2).

The comments related to the proposed coupling reporting requirements, the reporting of installed excess flow valves, and the proposed revisions to the Distribution Annual Report Form are summarized in the next section. The comments and PHMSA's responses regarding the Gas Distribution Annual Report and a new Mechanical Fitting Failure Report are discussed in the Paperwork Reduction Act section.

II. Summary of Comments

In response to the request for comments in the DIMP final rule, PHMSA received twenty-three letters commenting on the proposals regarding compression coupling reporting

requirements, the reporting of EFVs installed, and the revisions to the Distribution Annual Report Form. The commenters included 13 pipeline operators, two trade associations representing pipeline operators, the association representing State pipeline safety regulators, one State pipeline regulatory agency, one manufacturer, and one industry consultant. A summary of comments along with PHMSA's responses is provided below.

The majority of the comments recommended that PHMSA define key terms, revise the date to collect and report this information, and modify the Distribution Annual Report Form and instructions. They also requested consistency in the terminology used in § 192.1009, the Annual Report Form and instructions, and the Incident Report Form and instructions.

The comments addressed in this notice are detailed below:

Comment Topic 1: Define Key Term: Compression Coupling

Several commenters were not clear as to which pipeline fittings the term "compression coupling" encompassed. The comments stated that "compression coupling" implies a variety of mechanical joining methods. There was general consensus that the term "mechanical fittings" encompasses fittings such as compression, stab, nut follower, and bolted. In general, commenters stated that the term "mechanical fitting" is used in industry standards, and the meaning is broadly accepted. Some commenters proposed that PHMSA limit the collection of data by various criteria, such as compression-type mechanical fittings, plastic fittings, compression couplings, and fittings currently referenced in advisory bulletins. Commenters pointed out that there are differences between various types of compression fittings and to effectively address and mitigate the risks, the data collection needs to distinguish one type of compression fitting from another.

PHMSA Response: PHMSA recognizes that operators need clarification as to which fitting failures they need to report. Therefore, PHMSA has changed the term "compression coupling failure" to "mechanical fitting failure" and has included a definition for Mechanical Fitting in § 192.1001.

Comment Topic 2: Reportable Mechanical Fitting Failures

Commenters were also unclear if PHMSA intended for all mechanical fitting failures to be reported, regardless of the failure cause, or only those that were caused by material failures of the fitting. They were concerned that the lack of a standard definition of a reportable failure could result in inaccurate trending analysis. Commenters provided various opinions as to which hazardous mechanical fitting failure causes should be included in the data collection. One commenter stated that a hazardous leak caused by a compression coupling pulling out as the result of third party damage should not be considered a compression coupling failure since the failure is not indicative of the integrity and performance of a coupling. The commenter further stated that if a coupling fails as the result of another action, the operator should not be required to report the failure. On the other hand, another commenter stated that if a coupling leaks, it is a failure regardless of what failed, how it failed, or whether it failed in the body, the seal, or the pipe. Another operator indicated that the preamble in the final rule was clear that only hazardous leaks that were the result of "material failure" should be reported. One commenter noted that instructions for the annual report state that a material defect of a fitting exceeding the reasonable service life is not to be listed as a "Material or Weld" cause but as "Other." The commenters were uncertain if PHMSA would require fittings exceeding their reasonable service life to be reported as a mechanical fitting failure. Finally, another commenter questioned if a crack that propagates from the pipe into a compression coupling causing it to fail should be reported. Commenters requested that PHMSA provide examples of failures that must be reported.

PHMSA Response: The objective of the data collection is to identify mechanical fittings that, based on historical data, are susceptible to failure. PHMSA intends for operators to report all types and all sizes of mechanical fitting (stab, nut follower, bolt, or other compression type) failures that result in a hazardous leak. The reporting requirements apply to failures in the bodies of mechanical fittings or failures in the joints between the fittings and pipe. PHMSA recognizes that mechanical fitting failures can be the primary cause of a leak or that they may leak as the result of another cause such as excavation damage. Operators are to report mechanical fitting failures as the result of any cause, including, but not limited to, excavation damage, exceeding their service life, poor installation practice, and incorrect application. Fittings are to be included regardless of the material they join. Operators must report mechanical fittings that join steel-to-steel, steel-to-plastic, and plastic-to-plastic. Specific examples of mechanical fittings to be reported include, but are not limited to, transition fittings, risers, compression couplings, stab fittings, mechanical saddles, mechanical tapping tees, service tees, risers, sleeves, ells, wyes, and straight tees.

Comment Topic 3: Reportable Aboveground Leaks

Commenters sought criteria for defining reportable aboveground leaks. One commenter stated that operators should classify aboveground leaks differently from underground leaks because the vast majority of these fugitive emissions:

1. Dissipate harmlessly into the atmosphere;
2. Are located on meter sets, downstream of the service regulator, and therefore involve low operating pressures; and
3. Are located at threaded joints that may release small quantities (parts per million) that can only be detected by sophisticated electronic leakage detection instruments.

Meter sets commonly contain aboveground couplings where small leaks are eliminated by tightening. A widely accepted industry guidance document, Gas Pipeline Technical Committee (GPTC) Guide, does not currently provide gas leakage investigation and classification guidelines for aboveground leaks. The commenter also proposed a definition that would establish criteria for a "Hazardous Aboveground Leak" on Outside Piping and on Inside Piping. The commenter further proposed a definition for "Reportable Aboveground Leak" based on the "Hazardous Aboveground Leak" criteria. Alternatively, one commenter stated that the criteria for reporting leaks should be expanded to include leaks that can be cured by re-tightening, since the leak could have been avoided if the fitting had been sufficiently tightened at its initial installation. By defining these releases as "not leaks," the commenter asserted that important data may be lost, data that could possibly identify an area or company whose compression fittings could pose a threat.

PHMSA Response: PHMSA recognizes that operators seek additional criteria to define which leaks on aboveground pipe should be reported. Operators have previously reported the total number of leaks eliminated/repaired during the year on the Annual Report Form. PHMSA has not made changes to the criteria for collecting data for this field.

Therefore, all aboveground leaks should continue to be reported as detailed in the instructions for the Annual Report. The reporting of hazardous leaks repaired or eliminated is a new performance measure. Operators, PHMSA, and State regulatory agencies may decide to refine the criteria for reporting the measure when there is data to evaluate. Hazardous leaks, whether they occur aboveground or below ground, need to be reported. A hazardous leak meets both of the following definitions regardless of whether the leak occurs aboveground or below ground:

A "*leak*" is defined in the Annual Report instructions as an unintentional escape of gas from the pipeline. A non-hazardous release that can be eliminated by lubrication, adjustment, or tightening, is not a leak.

"*Hazardous Leak*" is defined in § 192.1001 as a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.

Comment Topic 4: EFV Data

One commenter requested that PHMSA use the total number of EFVs installed in an operator's system at the end of the year as the metric for reportable EFV data, not the number of EFVs installed during the year. This change would make the EFV metric consistent with the system data reported in PART B—System Description on the Annual Report Form and with the directive contained within Title 49 U.S.C. 60109(e)(3)(B). The commenter suggested that the information collected in Part E of the Annual Report Form be designated as, "The Number of EFVs in System at End of Year on single-family residences."

PHMSA Response: The requirement to report EFV metrics was mandated in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, codified at 49 U.S.C. § 60109(e)(3). The statute requires operators to annually report to PHMSA the number of EFVs installed on their systems to single-family residence service lines. PHMSA will continue to collect information regarding the number of EFVs installed on single-family residential services during the year. In addition, PHMSA will collect estimates on the total number of EFVs in the system at the end of the year. Further discussion on EFVs is found in the Paperwork Reduction Act section under "Gas Distribution Annual Report."

Comment Topic 5: Delay Mechanical Fitting Failure Information Collection and Reporting Date

Since the current date to start collecting data precedes the effective date of this final rule, commenters proposed that PHMSA delay the start date for collecting mechanical fitting failure data until calendar year 2011, and delay the due date for submitting this information until March 15, 2012. Commenters stated that operators need time to make changes to processes and procedures for capturing data, programming to data collection systems (6–12 months), changes to data collection forms (paper or electronic), and train personnel on new requirements. According to the commenters, these changes cannot occur until final requirements are released. Operators requested that PHMSA incorporate all planned changes to the annual report before operators are required to change their data collection process.

PHMSA Response: Based on the modifications to § 192.1009 for reporting mechanical fitting failures and the creation of the new Mechanical Fitting Failure Report, PHMSA is requiring that reporting of Mechanical Fitting Failures begin with calendar year 2011. PHMSA will allow for operators to submit reports throughout the calendar year with all reports due March 15 of the following year.

However, the new integrity management performance reporting criteria for the Gas Distribution Annual Report has been available since the DIMP final rule was published December 4, 2009. Therefore, PHMSA will not delay the reporting of the revised Gas Distribution Annual Report. Calendar year 2010 data will be required to be reported on the revised 2011 Gas Distribution Annual Report.

III. Final Rule

This final rule revises 49 CFR parts 191 and 192 to amend certain integrity management requirements applicable to distribution pipelines. This final rule addresses comments regarding the data collection scope for "mechanical fittings failures" and the implementation date for data collection and submission.

Section-by-Section Analysis

Section 191.12 Distribution Systems: Mechanical Fitting Failure Report

This section has been added to incorporate the reporting requirements for the new Mechanical Fitting Failure Report into the pipeline safety regulations. In addition, the submission requirements have been moved to this section.

Section 192.383 EFV Installation

This section is revised to specify that the reporting metrics for EFVs are detailed in the Gas Distribution Annual Report.

Section 192.1007 What are the required elements of an integrity management plan?

Paragraph (b) of this section is revised to align threats to the integrity of the pipeline with the "cause of leak" data fields on the Gas Distribution Annual Report Form. The phrase "material, weld or joint failure (including compression coupling)" is replaced with the phrase "Material or Welds."

Section 192.1009 What must an operator report when a mechanical fitting fails?

This section is being revised to change the term "compression coupling" to "mechanical fitting" and remove the listing of information to be collected and submitted. This section is also revised to refer operators to the new Mechanical Fitting Failure reporting requirements in § 191.12.

IV. Regulatory Analyses and Notices

Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. This rulemaking amends the recently published DIMP final rule to finalize the provisions for reporting mechanical fittings failures.

A. Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://docketsinfo.dot.gov/.*

B. Executive Order 13132

PHMSA has analyzed this final rule under the principles and criteria in Executive Order 13132 ("Federalism"). The final rule does not have a

substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The final rule does not impose substantial direct compliance costs on State and local governments. This final regulation does not preempt State law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 12866—Regulatory Planning and Review and DOT Regulatory Policies and Procedures

The final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

D. Executive Order 13175

PHMSA analyzed this final rule according to Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. In the DIMP final rule, PHMSA detailed the small business impact on the small business community and determined that 9,090 small operators would be impacted by the rule. Further, PHMSA estimated that the costs associated with the DIMP final rule would result in a significant adverse economic impact for some of the smallest affected entities. This final rule does not broaden the scope of the DIMP final rule. Therefore, PHMSA believes that the provisions contained in this final rule will not have a significant impact on small entities. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

F. PRA

In response to the comments received from the 60-day PRA notice contained in the DIMP final rule, PHMSA made a number of revisions to the Gas Distribution Annual Report. To maintain transparency and gather further input, PHMSA published a 30-day notice (June 28, 2010; 75 FR 36615) to seek additional comments on the revised Gas Distribution Annual Report. PHMSA received eight comments which have been reviewed and responded to as follows:

Section of form	Comment	PHMSA response/resulting action
General	Standardize information collection terminology used for both Incident and Annual Report Forms.	PR1. This will be addressed during the information collection renewal process that occurs every three years.
Part A. Operator Information Question 6. (Commodity Transported).	Instructions are unclear as to how operators with multiple gases should respond.	PR2. This question has been removed.
Part C. Total Leaks and Hazardous Leaks Eliminated/Repaired During Year.	There is no specific entry for collecting mechanical fitting leaks eliminated/repaired during the year in Part C. Since failure data on such fittings is collected in Part F, it would make sense to collect data specifically on them in Part C.	PR3. PHMSA is moving Part F to a separate form and therefore, will not make the suggested revision.
	Modify form instructions for Part C to have all mechanical fitting failures included in "Material and Welds" as stated in § 192.1007(b). Remove from "Equipment".	PR4. PHMSA is moving Part F to a separate form and therefore, will not make the suggested revision.
	For aboveground leaks, clarify the instructions to state that operators should only report hazardous aboveground leaks (the preponderance of aboveground leaks are trivial and represent no threat to the public).	PR5. PHMSA disagrees. PHMSA maintains that, based on the intent of recent guidance, all aboveground leaks should be reported unless the leak is a non-hazardous leak that can be eliminated by lubrication, adjustment, or tightening.
Part E. EFV Data	Operators should simply report all EFVs installed on the distribution system, not just on Single Family Residences. (No records to distinguish commercial and residential).	PR6. As detailed in DIMP, PHMSA will require each operator, on an annual basis, to report the number of EFVs installed during the year on service lines serving single-family residences. PHMSA has included another block to allow for companies to estimate the total number of EFVs installed in their system.
	The instructions should expressly state that operators can estimate the number of EFVs in service.	PR7. PHMSA will allow for estimates on the total number of EFVs in the system.
	The option regarding reporting single-family or single-family branch services is confusing and holds no value. (Should be removed).	PR8. PHMSA agrees and has removed this provision.
	This is a significant change from what was originally proposed, which was to report the number of EFVs that the operator installed during the year, which was easy to capture. Plus no discussion as to why this change was made.	PR9. PHMSA is requiring primarily the number of EFVs installed per § 192.383 for the year. PHMSA is also requiring operators to estimate the total number of EFVs installed in their system.

Section of form	Comment	PHMSA response/resulting action
	It is not a problem identifying EFVs added to system for the year (w/no distinction to type).	PR10. *See* PR7 and PR9.
	Will successive annual reports require a cumulative total number of EFVs installed or only the number installed for the calendar year reporting period? If cumulative, from what date forward?	PR11. *See* above. PHMSA is requesting CY 2010 data based on installation pursuant to § 192.383(b). PHMSA is also requesting operators to provide an estimated total number of EFVs installed in a system.
Part F. Mechanical Fitting Failure Data (This information will be placed on the new mechanical fitting failure form).	Form a stakeholders group to review the results and decide if the information request should sunset after the three- year OMB approval. Information in Part F is comprehensive and duplicative to other data collection efforts.	PR12. PHMSA will first seek to use the notice and comment process. However, PHMSA will continue to consider such actions for future revisions.
	A major problem is the enormous expansion of the data. Mechanical fittings encompass an almost infinite universe of fittings. PHMSA's **Federal Register** notice provides no explanation or justification for the expansion of the data request. Expanding the reporting scope increases reporting requirements by several orders of magnitude. There is no information in this OMB approval request regarding the paperwork burden for the great expansion in the data request. (Replace "mechanical fittings" with "compression couplings").	PR13. PHMSA is not expanding the reporting scope. Based on DIMP we are only looking for failures that result in a hazardous leak on "compression style" fittings (*e.g.* stab, nut follower, bolted).
	The "other" category following stab, nut follower, and bolted couplings should be deleted since they are the only type of compression type fittings.	PR14. PHMSA wants to confirm that there are no other types of compression type coupling in use. Therefore, PHMSA is retaining the "other" category with a slight revision to change "other" to "Other Compression Type Fitting."
	Delete the line beginning with "Was the Failure a Result of" and the associated subcategories.	PR15. PHMSA has deleted the line beginning with "Was the Failure a Result of" and revised the associated subcategories.
	Delete "Pull Out" as a choice for "Location of Leak."	PR16. PHMSA is keeping the "Pull Out" as a choice for "Location of the Leak" and revising "Location of Leak" to "How did the leak occur."
	Rather than use the bullet outline throughout Part F, use a numbered outline format so that the subsections of Part F can be clearly referenced if questions arise.	PR17. PHMSA created a new form for Part F with a numbered outline format.
	The form should allow "Unavailable" to be entered under "Year Installed," "Year Manufactured," and "If Year Unknown, Provide Decade Installed:" This option is provided for in the instructions for the bulleted items after this section.	PR18. PHMSA revised the instructions to allow for "Unavailable."
	Part F of the form would be reproduced for each separate event where failure of a compression fitting results in a hazardous leak. PHMSA should provide that the (electronic) form have an index or tracking number to identify separate events within the calendar year (such as 20XX–XXX). Such a mechanism is important, not only to distinguish between reports compiled during the year, but also in the case where information is later determined to require a supplemental report to be filed.	PR19. In addition to separating out Part F onto its own form, PHMSA will create a unique identifier for each report.
	The section titled "Location of Leak" should be relabeled "Type of Failure" with the existing choices: "Leak Through Seal," "Leak Through Body," or "Pull Out."	PR20. PHMSA revised the section title from "Location of Leak" to "How did the leak occur" to identify the visual evidence of the leak.
	The subsection "Was the Failure a Result of" should have a choice of "Unknown" or "Other" since the cause may never be known.	PR21. PHMSA is deleting that subsection.
	Operators should be able to file Part F throughout the year.	PR22. Operators will be able to file the new form for Mechanical Fitting failures throughout the year.

Section of form	Comment	PHMSA response/resulting action
	Under "Location of Leak" replace "Pull Out" with "Leak at Separation of Pipe and Coupling." (more appropriate and in line with other descriptions).	PR23. PHMSA has revised the Location of Leak section as detailed above.
	Annual report should only contain summary data.	PR24. Part F is now on its own form.

The resulting revised Gas Distribution Annual Report (PHMSA F–7100.1–1) and new Mechanical Fitting Failure Report (PHMSA F–7100.1–2) have been approved by OMB under the information collection titled "Incident and Annual Reports for Gas Pipeline Operators" (OMB Control No. 2137–0522).

G. Executive Order 13211

This final rule is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action.

H. Unfunded Mandates

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million (adjusted for inflation currently estimated to be $132 million) or more in any one year to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

I. National Environmental Policy Act

PHMSA analyzed this final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and DOT Order 5610.1C, and has determined that this action will not significantly affect the quality of the human environment. PHMSA conducted an Environmental Assessment on the DIMP NPRM and did not receive any comment on the preliminary analysis. In the final rule, we concluded that the rule would not have any significant impacts on the quality of the human environment. The amendments we are making to the final rule do not change that determination. The Environmental Assessment is available for review in the Docket.

J. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 191

Pipeline safety, Incident and Annual Reporting and recordkeeping requirements.

49 CFR Part 192

Integrity management, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending part 191 and part 192 of Title 49 of the Code of Federal Regulations as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

■ 2. A new § 191.12 is added to read as follows:

§ 191.12 Distribution Systems: Mechanical Fitting Failure Reports

Each mechanical fitting failure, as required by § 192.1009, must be submitted on a Mechanical Fitting Failure Report Form PHMSA F–7100.1–2. An operator must submit a mechanical fitting failure report for each mechanical fitting failure that occurs within a calendar year not later than March 15 of the following year (for example, all mechanical failure reports for calendar year 2011 must be submitted no later than March 15, 2012). Alternatively, an operator may elect to submit its reports throughout the year. In addition, an operator must also report this information to the State pipeline safety authority if a State has obtained regulatory authority over the operator's pipeline.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 3. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

■ 4. In § 192.383, paragraph (c) is revised to read as follows:

§ 192.383 Excess flow valve installation.

* * * * *

(c) *Reporting.* Each operator must report the EFV measures detailed in the annual report required by § 191.11.

■ 5. In § 192.1001, a definition for "Mechanical fitting" is added in appropriate alphabetical order as follows:

§ 192.1001 What definitions apply to this subpart?

* * * * *

Mechanical fitting means a mechanical device used to connect sections of pipe. The term "Mechanical fitting" applies only to:

(1) Stab Type fittings;
(2) Nut Follower Type fittings;
(3) Bolted Type fittings; or
(4) Other Compression Type fittings.

* * * * *

■ 6. In § 192.1007, in paragraph (b), the first sentence is revised to read as follows:

§ 192.1007 What are the required elements of an integrity management plan?

* * * * *

(b) *Identify threats.* The operator must consider the following categories of threats to each gas distribution pipeline: corrosion, natural forces, excavation damage, other outside force damage, material or welds, equipment failure, incorrect operations, and other concerns that could threaten the integrity of its pipeline. * * *

* * * * *

■ 7. Section 192.1009 is revised to read as follows:

§ 192.1009 What must an operator report when a mechanical fitting fails?

(a) Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system must submit a report on each mechanical fitting failure, excluding any failure that results only in a nonhazardous leak, on a Department of Transportation Form PHMSA F–7100.1–2. The report(s) must be submitted in accordance with § 191.12.

(b) The mechanical fitting failure reporting requirements in paragraph (a) of this section do not apply to the following:

(1) Master meter operators;

(2) Small LPG operator as defined in § 192.1001; or

(3) LNG facilities.

Issued in Washington, DC, on January 24, 2011.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2011–2081 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 76, No. 21
Tuesday, February 1, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 110119042–1041–01]

RIN 0610–XA04

Request for Comments: Review and Improvement of EDA's Regulations

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Economic Development Administration (EDA) is an agency within the U.S. Department of Commerce that leads the Federal economic development agenda by making strategic grants-based investments. EDA's regulations provide the framework through which the agency administers its economic development assistance programs. EDA is beginning the process of updating the agency's regulations and is committed to ensuring that public feedback helps shape the revised regulations. As part of the Administration's commitment to open government and in response to Executive Order 13563 "Improving Regulation and Regulatory Review", EDA requests input from the public on any obstacles created by EDA's current regulations and ways to improve them to help the agency better advance innovative economic development in the 21st century. EDA expects that this process will result in an updated rulemaking that reflects current economic development practice to advance an innovative economy.

DATES: Comments must be received no later than 5 p.m. Eastern Time on March 9, 2011.

ADDRESSES: You may submit comments by any of the following methods. All comments must include "Comments on EDA's regulations" and Docket No. 110119042–1041–01.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.eda.gov/.* EDA has created an online feature for submitting comments. Follow the instructions at *http://www.eda.gov/.*
- *E-mail: regulations@eda.doc.gov.* Include "Comments on EDA's regulations" and Docket No. 110119042–1041–01 in the subject line of the message.
- *Fax:* (202) 482–5671, *Attention: Office of Chief Counsel.* Please indicate "Comments on EDA's regulations" and Docket No. 110119042–1041–01 on the cover page.
- *Mail:* Economic Development Administration, Office of Chief Counsel, Suite D–100, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Please indicate "Comments on EDA's regulations" and Docket No. 110119042–1041–01 on the envelope.

FOR FURTHER INFORMATION CONTACT: Jamie Lipsey, Attorney Advisor, U.S. Department of Commerce, Economic Development Administration, Office of Chief Counsel, 1401 Constitution Avenue, NW., Suite D–100, Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: Established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA), EDA's mission is to lead the Federal economic development agenda by promoting competitiveness and preparing American regions for growth and success in the worldwide economy. EDA partners with stakeholders throughout the United States to foster job creation, collaboration, and innovation. EDA's regulations, which are codified at 13 CFR chapter III, implement the agency's six economic development assistance programs authorized under PWEDA, as well as the Trade Adjustment Assistance for Firms Program and Trade Adjustment Assistance for Communities Program, which are authorized under chapters 3, 4, and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

In an opinion published in the *Wall Street Journal* on January 18, 2011, President Obama recognized that Federal regulations sometimes fail to strike the correct balance, placing unreasonable burdens on businesses that stifle innovation and have had a chilling effect on growth and jobs. Also on January 18, 2011, the President signed Executive Order 13563 "Improving Regulation and Regulatory Review," which requires Federal agencies to review existing rules to remove outdated regulations that stifle job creation and make the U.S. economy less competitive.

EDA is beginning the process of updating its regulations, which provide the framework through which the agency selects, awards, and administers its grant investments. Through this notice of inquiry (NOI), EDA requests input from the public on any obstacles created by EDA's current regulations and ways to improve them to help the agency better advance innovative economic development in the 21st century. The agency is particularly interested in learning of any perceived impediments to contemporary economic development practices that are produced as a cause or consequence of a particular regulation. Although EDA welcomes comments on all of its regulations, the agency requests particular input on those regulations that impact the creation and growth of Regional Innovation Clusters (RICs). In addition, EDA has identified potential issues in the area of property management on which the agency requests comments, as discussed below. As part of the Administration's commitment to open government, EDA is interested in broad public and stakeholder participation in this effort and strives to create a simplified regulatory system that balances the agency's fiduciary and transparency responsibilities with good, common sense customer service to our stakeholders and the American people.

1. Regional Innovation Clusters (RICs)

EDA supports the development and growth of RICs as proven economic development tools through which American regions can create jobs and grow their economies. A RIC is an active network of similar, synergistic, or complementary organizations engaged in or with a particular industry sector, with active channels for business transactions, communications, and dialogue that share specialized infrastructure, labor markets, and services and that are located within a

defined geographic region. These active channels support the genesis of business ideas, innovations, and initiatives that create new companies and jobs. A RIC's region may cross municipal, county, and other jurisdictional boundaries. A RIC often includes catalysts of innovation and drivers of regional economic growth, such as local universities, government research centers, and/or other research and development resources. In addition, participants in the RIC may have strategic partnerships with entities outside of the RIC's geographic region. A successful RIC will leverage the region's unique competitive strengths and find ways to nurture networks for business financing, business-to-business sales, education, and workforce development. These networks work in concert with local governments, venture capitalists, private banks, workforce investment boards, non-profit organizations, institutions of higher education (including community colleges), and other public and private agencies and institutions.

EDA seeks information on whether its regulations appropriately facilitate the creation and promotion of RICs and comments on ways the regulations can better support RICs. EDA also seeks comments on any impediments the regulations present to its stakeholders as they work toward the creation and implementation of RICs. For example, should EDA define what it means by a RIC in its "Definitions" section at 13 CFR 300.3 to provide stakeholders a clearer idea of what the agency seeks to encourage? If so, is the description above adequate as a definition? As another example, should EDA include a RIC analysis or strategy as part of the technical requirements of Comprehensive Economic Development Strategies as set out at 13 CFR 303.7(b)?

2. Property Management

EDA has become aware of a potential issue with its property management regulations, which are set out at 13 CFR part 314. As trustee of appropriated taxpayer dollars, EDA safeguards the public's interest in grant assets, and the agency's property management regulations provide the framework through which this is accomplished. EDA takes and retains a security interest (the Federal Interest) in property, including real and personal property, purchased or improved with grant funds. *See* 13 CFR 314.1 and 314.2. The Federal Interest helps ensure that project property is used for the economic development purposes for which the grant was awarded. In general, EDA's regulations require that property purchased or improved with EDA assistance remain unencumbered and that the recipient hold title to the property for its estimated useful life. In some instances, these regulations have proved particularly challenging for public/private partnerships designed to advance a community's economic development priorities. EDA seeks input on innovative ways that would allow recipients to structure a project (and property ownership, as appropriate) to accomplish relevant economic development goals, while continuing to safeguard the Federal Interest. For example, are there practical ways to secure the Federal Interest without requiring the recordation of a Federal lien or other encumbrance, or the recipient to hold title to project property?

In addition, EDA seeks comments on the possibility of providing for additional flexibility with respect to the agency's encumbrance and subordination requirements as set out at 13 CFR 314.6 and 314.7. When EDA assistance is used to acquire or improve real property, the recipient must provide to EDA a locally recorded security interest in the property improved with grant funds. Such security interest can include a lien, mortgage, or another enumerated form of encumbrance. In the event that a project fails for any reason, EDA can recover the fair market value of its interest in the property and use those funds to make additional grants that will provide further opportunities for job creation. When EDA approves encumbrances on real property acquired or approved with program grant funds, EDA generally does not allow the Federal Interest to be subordinated to any other interest. However, given the realities of project development and real estate financing, EDA sometimes will allow (on a case-by-case basis) the Federal Interest to be subordinated provided that: EDA determines to its satisfaction that the recipient's financial standing is strong; the recipient will not default on its obligations; and the project cannot happen without the subordination. *See* 13 CFR 314.6(b).

The agency's subordination requirements provide needed flexibility when long-term financing is available and when the level of risk to the Federal Interest can be assessed at the outset. However, it has come to EDA's attention that the requirements may not provide the necessary flexibility when short-term financing is involved. Some financing tools available to recipients may be restricted to a relatively short period of time. For example, the credit allowance period under the New Markets Tax Credit (NMTC) Program is seven years (*see* IRC 45D(a)(3)). Projects involving NMTC investments often refinance at the conclusion of the credit allowance period (see the NMTC Program FAQs for more information on the program, which are available on the U.S. Department of the Treasury's Web site at *http://www.cdfifund.gov/docs/nmtc/2009/NMTC%20Compliance%20Monitoring%20FAQ.pdf*). Also, in some cases, short-term financing is the only type of financing that a recipient can realistically obtain. In such circumstances, other project lenders often want EDA to agree at the time project financing is negotiated to subordinate its interest in the future after the short-term loan matures so that follow-on financing can be put into place. Because future market conditions are uncertain, EDA cannot make the findings under 13 CFR 314.6(b) needed to subordinate the Federal Interest. A current agreement to subordinate in the future puts the Federal Interest at increased risk; are there mechanisms available to make that risk acceptable if it allows promising economic development projects to go forward?

Would it be useful for EDA's regulations to specifically provide for situations where short-term project financing is the only tool available? Specifically, should EDA agree to subordinate the Federal Interest in the future when future market conditions, the strength of the recipient, and the success of the project are largely unknown? In what situations should this tool be exercised? What award conditions should EDA require in connection with such arrangements? In some circumstances, EDA is able to hedge against risk by, for example, requiring a non-profit applicant to add a city or other local government body as a co-applicant. This avenue is not available in all cases. Given this, are there alternative mechanisms that can protect the Government's interest in case the project fails so that EDA can recover the Federal Interest to make new grants?

Although the examples above center on how EDA's regulations affect RIC development and adjustments to EDA's property management requirements, as noted above, EDA seeks public comments on any aspect of the regulations. Comments that identify potential regulatory impediments to economic development and make corresponding recommendations, as well as the commenter's experiences complying with the regulation at issue, will be instructive.

Comments should be submitted to EDA as described in the **ADDRESSES**

section of this notice. EDA strongly encourages the use of the online feature on the agency's Web site to share comments and suggestions on improving the agency's regulations. The feature is easily accessible on EDA's Web site and offers participants an opportunity to view the comments of others. As noted above, the online commenting feature can be accessed at *http://www.eda.gov/*. EDA will consider all comments submitted in response to this NOI that are received by 5 p.m. Eastern Time on March 14, 2011, as referenced under **DATES**. EDA will not accept public comments accompanied by a request that a part or all of the material be treated confidentially for any reason; EDA will not consider such comments and will return such comments and materials to the commenter. All public comments in response to this NOI must be in writing (including fax or e-mail) and will be a matter of public record. All comments submitted will be available for public inspection and copying at *http://www.regulations.gov*.

Dated: January 25, 2011.

Brian P. McGowan,

Deputy Assistant Secretary for Economic Development and Chief Operating Officer.

[FR Doc. 2011–1937 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0033; Directorate Identifier 2010–NM–019–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200 series airplanes. This proposed AD would require installing a new circuit breaker, relays, and wiring to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) systems and other non-essential electrical systems through a switch in the flight compartment, and doing other specified actions. The actions include replacing the cabin area control panels; changing the wiring; modifying the purser station or the A–4 galley, as applicable; installing new cabin system management unit, cabin area control panel, overhead electronics unit, and zone management units operational software, as applicable; and making a change to the cabin services system (CSS) configuration database and installing the new database in the CSS components. This proposed AD would also require changing the wiring at the cabin management system in the purser station. This proposed AD results from an IFE systems review. We are proposing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through a switch in the flight compartment in the event of smoke or flames. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential electrical systems in the event of smoke or flames could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

DATES: We must receive comments on this proposed AD by March 18, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; fax 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0033; Directorate Identifier 2010–NM–019–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

In response to numerous reports of smoke or flames in the passenger cabin of various models of transport category airplanes, we conducted a comprehensive in-flight entertainment (IFE) systems review. Earlier investigation of the reports had revealed that the source of the smoke and flames was from cabin IFE system components, including electronic seat boxes mounted under passenger seats, IFE wiring, IFE monitors, cabin lighting, wall outlets, and other non-essential cabin electrical systems.

The systems review disclosed that in order to minimize the risk of smoke or flames in the passenger cabin, a switch is needed in the flight compartment to enable the flightcrew to turn off electrical power to the IFE system and other non-essential electrical systems in the event of smoke or flames. The flightcrew's inability to turn off power

to the IFE system and other non-essential electrical systems, if not corrected, could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777–23–0142, dated November 25, 2003. This service bulletin describes procedures for the following actions:

- Removing the cabin area control panels.
- Changing the wiring.
- Installing new cabin control panels.
- Modifying the purser station and the A–4 galley, as applicable.
- Installing cabin system management unit operational program software.
- Installing cabin area control panel operational program software.
- Installing zone management unit operational program software.
- Installing overhead electronics unit operational program software, if necessary.
- Making changes to the new configuration database.
- Installing the new configuration database to the cabin services system.

Boeing Service Bulletin 777–23–0142, dated November 25, 2003 refers to Jamco Service Letter SL–K0789, dated June 10, 1997, as an additional source of service information for modifying the cabin system control panel compartment for airplanes in Group 4 (as identified in Boeing Service Bulletin 777–23–0142, dated November 25, 2003).

Boeing Service Bulletin 777–23–0142, dated November 25, 2003, specifies prior or concurrent accomplishment of Boeing Service Bulletin 777–23–0057, dated April 9, 1998, which describes procedures for changing the wiring in the purser station for airplanes in Group 4 (as identified in Boeing Service Bulletin 777–23–0142, dated November 25, 2003).

Difference Between Service Information and AD

Boeing Service Bulletin 777–23–0142, dated November 25, 2003, does not contain a compliance time for the required actions. This NPRM would require the actions be done within 60 months after the effective date of this AD. We have coordinated this difference with The Boeing Company.

FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

Currently, there are no affected airplanes on the U.S. Register. The following table provides the estimated costs for U.S. operators to comply with this proposed AD if an affected airplane is imported and placed on the U.S. Register in the future.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product
Modification of the cabin services system wiring.	Between 6 and 9 [1]	$85	Between $119,709 and $120,338.	Between $120,219 and $121,103.
Concurrent modification	1	85	None	$85.

[1] Depending on airplane configuration.

According to the manufacturer, some of the costs of this proposed 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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0033; Directorate Identifier 2010–NM–019–AD.

Comments Due Date

(a) We must receive comments by March 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 777–23–0142, dated November 25, 2003.

Subject

(d) Air Transport Association (ATA) of America Code 23: Communications.

Unsafe Condition

(e) This AD results from an in-flight entertainment (IFE) systems review. We are proposing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through a switch in the flight compartment in the event of smoke or flames. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential electrical systems in the event of smoke or flames could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

Compliance

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

Modification

(g) Within 60 months after the effective date of this AD: Remove the cabin area control panels; change the wiring; install new cabin area control panels; modify the purser station or A–4 galley, as applicable; install new cabin system management unit, cabin area control panel, overhead electronics unit, and zone management units operational software, as applicable; and make a change to the cabin services system (CSS) configuration database and install the new database in the CSS components; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–23–0142, dated November 25, 2003.

Note 1: Boeing Service Bulletin 777–23–0142, dated November 25, 2003, refers to Jamco Service Letter SL–K0789, dated June 10, 1997, as an additional source of guidance for modification of the cabin system control panel compartment for airplanes in Group 4 (as identified in Boeing Service Bulletin 777–23–0142, dated November 25, 2003).

Concurrent Requirement

(h) For Group 4 airplanes identified in Boeing Service Bulletin 777–23–0142, dated November 25, 2003: Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, change the termination of two wires at the cabin management terminal in the purser station, in accordance with Boeing Service Bulletin 777–23–0057, dated April 9, 1998.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; fax 425–917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2171 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0034; Directorate Identifier 2010–NM–021–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200 series airplanes. This proposed AD would require installing a new circuit breaker, relays, and wiring to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) systems and other non-essential electrical systems through a switch in the flight compartment, and doing other specified actions. The actions include removing the cabin system control panel (CSCP) core partition software, the cabin area control panel (CACP) operational program software (OPS), the zone management units (ZMU) OPS, and the cabin system management unit (CSMU) OPS; installing OPS for the CSCP, CACP, ZMU, and CSMU; and installing the new configuration database (CDB). This proposed AD would also require installing a new CSCP; installing a new cabin management system (CMS) CDB; and installing new OPS for the CSCP, ZMU, passenger address controller, cabin interphone controller, CACP, speaker drive module, overhead electronics units, and seat electronics unit. This proposed AD results from an IFE systems review. We are proposing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through a switch in the flight compartment in the event of smoke or flames. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential electrical systems in the event of smoke or flames could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

DATES: We must receive comments on this proposed AD by March 18, 2011.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

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

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6454; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0034; Directorate Identifier 2010–NM–021–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

In response to numerous reports of smoke or flames in the passenger cabin of various models of transport category airplanes, we conducted a comprehensive in-flight entertainment (IFE) systems review. Earlier investigation of the reports had revealed that the source of the smoke and flames was from cabin IFE system components, including electronic seat boxes mounted under passenger seats, IFE wiring, IFE monitors, cabin lighting, wall outlets, and other non-essential cabin electrical systems.

The systems review disclosed that in order to minimize the risk of smoke or flames in the passenger cabin, a switch is needed in the flight compartment to enable the flightcrew to turn off electrical power to the IFE system and other non-essential electrical systems. The flightcrew's inability to turn off power to the IFE system and other non-essential electrical systems in the event of smoke or flames, if not corrected, could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006. This service bulletin describes procedures for the following actions:

- Removing the cabin system control panel (CSCP) core partition (CP) software, the cabin area control panel (CACP) operational program software (OPS), the zone management unit (ZMU) OPS, and the cabin system management unit (CSMU) OPS.
- Installing CSCP–CP software.
- Installing CACP OPS software.
- Installing ZMU OPS software.
- Installing CSMU OPS software.
- Installing the new configuration database in the cabin management system (CMS) line replaceable units.

Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006, specifies prior or concurrent accomplishment of Boeing Service Bulletin 777–23–0141, dated June 14, 2001, which describes procedures for replacing the OPS for the CSCP, the CACP, and the CSMU, and reinstalling the configuration database.

Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006, also specifies prior or concurrent accomplishment of Boeing Service Bulletin 777–23–0010, dated April 25, 1996, which describes procedures for installing a new CSCP; a new CMS configuration database; and new OPS for the CSCP, ZMU, passenger address controller, cabin interphone controller, CACP, speaker drive module, overhead electronics unit, and seat electronics unit.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Information."

Difference Between the Proposed AD and Service Information

Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006, does not contain a compliance time for the proposed modification specified in paragraph (g) of this NPRM. This NPRM proposes a compliance time of 60 months. This difference has been coordinated with The Boeing Company.

Costs of Compliance

We estimate that this proposed AD would affect 47 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Modification specified in Boeing Service Bulletin 777–23–0176	2	$85	$0	$170	47	$7,990
Concurrent modification, Boeing Service Bulletin 777–23–0010 [1] ..	6	85	920	1,430	47	67,210
Concurrent modification, Boeing Service Bulletin 777–23–0141 [1] ...	3	85	450	705	47	33,135

[1] Boeing states that warranty remedies are available for man-hour reimbursement and cost of parts.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0034; Directorate Identifier 2010–NM–021–AD.

Comments Due Date

(a) We must receive comments by March 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 23: Communications.

Unsafe Condition

(e) This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through a switch in the flight compartment in the event of smoke or flames. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential electrical systems in the event of smoke or flames could result in the inability to control smoke or flames in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

Compliance

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

Modification

(g) Within 60 months after the effective date of this AD: At the cabin system control panel (CSCP), remove the CSCP core partition software, the cabin area control panel (CACP) operational program software (OPS), the zone management unit (ZMU) OPS, and the cabin system management unit (CSMU) OPS; install core partition software for the CSCP; install OPS for the CACP, ZMU, and CSMU; and install the new configuration database (CDB) in the cabin management system (CMS) line replaceable units; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–23–0176, Revision 2, dated October 26, 2006.

Concurrent Requirements

(h) Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, replace the OPS for the CSCP, CACP, and CSMU, and reinstall the CDB, in accordance with Accomplishment Instructions of Boeing Service Bulletin 777–23–0141, dated June 14, 2001.

(i) Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, install a new CSCP; install a new CMS CDB; and install new OPS for the CSCP, ZMU, passenger address controller, cabin interphone controller, CACP, speaker drive module, overhead electronics units, and seat electronics unit; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–23–0010, dated April 25, 1996.

Alternative Methods of Compliance (AMOCs)

(j)(1) Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6454; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2172 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0035; Directorate Identifier 2010–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–601, B4–603, B4–605R, C4–605R Variant F, and F4–605R Airplanes, and A310–204 and –304 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements.

This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.

* * * * *

The unsafe condition is possible separation of the engine from the engine mount during flight. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 18, 2011.

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

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

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0035; Directorate Identifier 2010–NM–110–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0066, dated April 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements.
>
> This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.
>
> For the reasons described above, this AD requires operators to [perform an inspection to determine the part number of the forward engine mount skinny cast yokes,] perform a one time [detailed] inspection [for rupture] of the forward engine mount skinny cast yokes Part Number (P/N) 9383M43G08, 9383M43G09, 9383M43G10 and 9383M43G11 of GE CF6–80C2 powered aeroplanes and to replace the affected skinny cast yokes with forged yokes.
>
> Upon replacement of the skinny cast yoke, the General Electric CF6–80C2 Service Bulletin (SB) 72–0222 [installation of a redesigned forward engine mount system] must be completed as a prerequisite.

The unsafe condition is possible separation of the engine from the engine mount during flight. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telexes A300–71A6029, including Appendices 01, 02, 03, and 04, dated March 30, 2010; and A310–71A2036, including Appendices 01, 02, 03, and 04, dated March 30, 2010. GE has issued CF6–80C2 Service Bulletin 72–0222, Revision 4, dated February 29, 2000. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 53 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $45,050, or $850 per product.

In addition, we estimate that any necessary follow-on actions would take about 608 work-hours and require parts costing $322,000, for a cost of $373,680 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2011–0035; Directorate Identifier 2010–NM–110–AD.

Comments Due Date

(a) We must receive comments by March 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–605R, C4–605R Variant F, and F4–605R airplanes, and A310–204 and –304 airplanes; certificated in any category; powered by General Electric Model CF6–80C2 engines.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements.

This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.

* * * * *

The unsafe condition is possible separation of the engine from the engine mount during flight.

Compliance

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

Inspection and Corrective Actions

(g) Within 400 flight cycles after the effective date of this AD, for each engine, inspect to determine the part number of the forward engine mounting yoke, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the yoke can be conclusively determined from that review.

(1) If the inspection required in paragraph (g) of this AD finds any mounting yoke is a skinny cast yoke having part number (P/N) 9383M43G08, 9383M43G09, 9383M43G10, or 9383M43G11, do a detailed inspection of the yoke to determine if it is ruptured, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable.

(i) If the mounting yoke is ruptured, before further flight, repair in accordance with a method approved by the FAA or the European Aviation Safety Agency (EASA) or its delegated agent.

(ii) If the mounting yoke is not ruptured, within 7,000 flight cycles after the effective date of this AD replace the skinny cast yoke with a forged yoke, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable.

(2) At the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, report to Airbus the findings of the inspection required by paragraph (g)(1) using Appendix 02 and Appendix 03, as applicable, of Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable. Send the report to Laure Dupland, SEEE3; Customer Services; telephone +33 (0)5 61 18 20 24; fax +33 (0)5 61 93 36 14; e-mail *laure.dupland@airbus.com*.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(h) Prior to or concurrent with the actions required by paragraph (g)(1)(ii), install a redesigned forward engine mount system in accordance with the Accomplishment Instructions of GE CF6–80C2 Service Bulletin 72–0222, Revision 4, dated February 29, 2000.

(i) As of the effective date of this AD, do not install any forward engine mount skinny cast yoke having P/N 9383M43G08, 9383M43G09, 9383M43G10, or 9383M43G11, on any airplane.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0066, dated April 21, 2010; and the service information identified in Table 1 of this AD; for related information.

TABLE 1—SERVICE INFORMATION

Service information	Revision	Date
Airbus All Operators Telex A300–71A6029	Original	March 30, 2010.
Airbus All Operators Telex A310–71A2036	Original	March 30, 2010.
GE CF6–80C2 Service Bulletin 72–0222	4	February 29, 2000.

Issued in Renton, Washington, on January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2173 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2010–0247; Notice No. 11–01]

RIN 2120–AJ70

Safety Enhancements Part 139, Certification of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the airport certification standards in part 139. This action would establish minimum standards for training of personnel who access the airport non-movement area (ramp and apron) to help prevent accidents and incidents in that area. A certificate holder would be required to conduct pavement surface evaluations to ensure reliability of runway surfaces in wet weather conditions. This action would also require a Surface Movement Guidance Control System (SMGCS) plan if the certificate holder conducts low visibility operations. The plan would facilitate the safe movement of aircraft and vehicles in low visibility conditions. Finally, this action would clarify the applicability of part 139 and explicitly prohibit fraudulent or intentionally false statements in a certificate application or record required to be maintained.

DATES: Send your comments on or before April 4, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0247 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Kenneth Langert, Federal Aviation Administration, Office of Airports Safety and Standards, Airport Safety and Operations Division (AAS–300), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4529; fax (202) 493–1416; e-mail: *kenneth.langert@faa.gov.* For legal questions concerning this rule, contact Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7143; fax (202) 267–7971; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44706, "Airport operating certificates." 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, including issuing airport operating certificates that contain terms the Administrator finds necessary to ensure safety in air transportation. This proposed rule is within the scope of that authority because it would enhance safety in airport operations by requiring training of personnel accessing the non-

movement area, periodic friction testing, and plans for low visibility operations.

Background

The FAA issues airport operating certificates (AOCs) under part 139 to certain airports serving commercial passenger-carrying operations based on the type of commercial operations and size of aircraft served. Currently, 556 of the four classes of airports (I, II, III, IV) defined in part 139 hold FAA-issued airport operating certificates. Part 139 prescribes the minimum standards for maintaining and operating the physical airport environment.

Non-Movement Area Safety Training

Currently, part 139 requires periodic training for all personnel who access movement (runways and taxiways) and safety areas. Airlines and airports provide primary safety oversight in non-movement areas (ramps and aprons). Some airports voluntarily implement training for personnel accessing the non-movement area. FAA Advisory Circular (AC) 150/5210–20, *Ground Vehicle Operations on Airports* [1] provides guidance to airport operators developing training programs for safe ground vehicle operations and pedestrian control. This guidance applies to all personnel accessing the movement and non-movement areas.

Airport ramps typically are confined, congested areas in which departing and arriving aircraft are serviced by ramp workers, including baggage, catering, and fueling personnel. Additional personnel on ramps include airport police, FAA officials, and other airport, airline, and vendor staff. The presence of large numbers of people using equipment in a relatively small area, often under significant time pressure, creates an environment for injuries and aircraft damage. Errors occur because of carelessness, distractions, confusion, inadequate training, lack of supervision, and time pressure.

The Government Accountability Office (GAO) issued a report in 2007 stating a lack of complete accident data and standards for ground handling hindered efforts to improve airport ramp safety.[2] The GAO found that the FAA, National Transportation Safety Board (NTSB), and Occupational Safety and Health Administration (OSHA) investigated 29 fatal ramp accidents from 2001 through 2006.[3] Most fatal accidents involve ramp workers, but pilots and passengers have died in ramp accidents. The GAO report concluded that there are no Federal or industry-wide standards for ramp operations.

According to a 2007 Flight Safety Foundation article, turnover among personnel typically is high, training can be spotty, and standard operating procedures may be nonexistent or ignored.[4] The Flight Safety Foundation article also found that ramp accidents occur frequently and cause airlines to incur significant costs often not covered by insurance.

Furthermore, activities in the non-movement area affect the safety of crewmembers and passengers after the aircraft leaves the ramp area. Undetected aircraft damage from ramp activities can cause in-flight emergencies. In December 2005, an Alaska Airlines MD–80 departing from Seattle, WA, to Burbank, CA, experienced a sudden cabin depressurization. The aircraft returned to Seattle and landed without injuries. The investigation revealed that a ramp vehicle had punctured the aircraft fuselage, but no one had reported the incident.[5]

Runway Pavement Surface Evaluation

Braking performance is critical for all aircraft especially on wet runway surfaces. Under certain conditions, hydroplaning or unacceptable loss of traction (tire/pavement contact) results in poor braking performance and possible loss of directional control. Standing water, runway contaminants (*e.g.,* fuel and rubber), and smoothing or "polishing" of surface aggregates reduce friction.

Research shows that a higher level of friction is achieved by forming or cutting closely spaced transverse grooves on the runway surface, which allows rain water to escape from beneath tires of landing aircraft.[6] Pavement grooving was the first major step in achieving safer pavement surfaces for aircraft operations in wet weather conditions. Studies conducted in the U.S. and United Kingdom determined that an open graded, thin hot-mix asphalt (HMA) surface course called "porous friction course" (PFC) also could achieve good results. This surface permits rain water to permeate through the course and drain off transversely to the side of the runway, preventing water buildup on the surface and creating a relatively dry pavement condition during rainfall. An FAA Technical Center study demonstrated that a high level of friction was maintained on PFC overlays for the entire runway length.

Today, most airports in the United States use these methods and materials. Consequently, the frequency of accidents and incidents caused by loss of directional control and inadequate stopping capability has been greatly reduced. However, the skid resistance of these surfaces deteriorates over time.

The FAA provides guidance and procedures in Advisory Circular 150/5320–12C, *Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.* However, there is no FAA requirement for airports to regularly inspect and record runway friction levels or to ensure runways are maintained in a manner that provides adequate friction levels. Neither is there a requirement to perform tests using continuous friction measuring equipment (CFME) or to evaluate the drainage capabilities of runway surface grooving and transverse slopes.

The FAA has determined that visual evaluations of pavement friction are not sufficient. CFME provides quantitative results that can be used to determine whether friction values meet acceptable standards. A list of approved CFME can be found in AC 150/5320–12C. While some U.S. airports use CFME, others may use less effective methods to monitor build-up of rubber deposits and deterioration of friction characteristics.

Surface Movement Guidance Control System (SMGCS)

A Surface Movement Guidance Control System (SMGCS) is a system of lighting, signs, and markings that allows an aircraft to operate to and from the runway in very low visibility in a controlled and safe manner. This system provides guidance to and control of aircraft, ground vehicles, and personnel on the movement area of an airport. Guidance relates to facilities, information, and advice necessary for pilots of aircraft or drivers of ground vehicles to navigate the movement area and to keep aircraft or vehicles on the surfaces or within the areas intended for their use. Control means the measures necessary to prevent collisions and ensure traffic flows smoothly and freely.

The FAA guidance on SMGCS is available in AC 120–57A, *Surface Movement Guidance and Control System.* Low-visibility operations exist when Runway Visual Range (RVR) reports on any active runway drop below 1,200 feet RVR. AC 120–57A provides recommendations for

[1] AC issued June 21, 2002, with a change issued March 31, 2008.

[2] *See* GAO Report 08–29 (November 2007).

[3] *See* GAO Report 08–29 (November 2007).

[4] *See* Flight Safety Foundation "Defusing the Ramp" (May 2007).

[5] *See* NTSB Report SEA06LA033 (December 2005).

[6] *See* Advisory Circular 150/5320–12, Measurement, Construction, and Maintenance of Skid-Resistant Airport Pavement Surfaces §§ 1–3. 2–15 (March 18, 1997).

improved safety procedures to accommodate low-visibility ground operations. Some airports voluntarily adopted AC 120–57A SMGCS practices. Some U.S. airports were approved to conduct low-visibility operations, but have not adopted all of the AC 120–57A SMGCS practices. Moreover, no FAA requirement ensures airports implement these recommendations (including optimum ground equipment, lighting, and signage) where air carriers conduct low-visibility operations.

The potential significance of a ground movement error by a vehicle or aircraft during low-visibility operations is an increasing concern as more airline operations and multiple runway configurations are planned for the National Airspace System (NAS). Additionally, technology advances such as heads-up displays (HUD) and enhanced flight vision systems (EFV) increase low-visibility operating capability. The FAA and ICAO consider the recommended low-visibility practices in AC 120–57A, and specific enhanced ground equipment and guidance, necessary to ensure safety during low-visibility ground movement operations. Additionally, the FAA now requires Surface Movement Guidance and Control System (SMGCS) for commissioning new runways under the FAA's Operations Evolution Plan (OEP).

General Discussion of the Proposal

The FAA proposes to amend § 139.303 to require periodic training for all personnel authorized to access the non-movement area. The proposal also would add the definition of "non-movement area" to § 139.5. Second, the proposal would amend § 139.305 to require a certificate holder to evaluate the surface characteristics of runways. Third, the proposal would require a certificate holder that allows operations below 1,200 feet RVR to implement a SMGCS plan in its airport certification manual (ACM). Fourth, the FAA proposes to amend § 139.1 to clarify the applicability of this part based on only the passenger seats in an aircraft used for passenger-carrying operations. Finally, the FAA proposes a new § 139.115 that would prohibit fraudulent or intentionally false statements on an application for a certificate or other record required to be kept.

Non-Movement Area Safety Training

The FAA has concluded non-movement area safety can be improved with increased training. Airport workers must be knowledgeable and aware of the various activities that take place in the non-movement area. This knowledge and awareness reduces confusion and carelessness by individuals accessing the non-movement area. Accordingly, the FAA proposes to require training for all persons authorized to access the non-movement area. This training would complement the existing training for persons accessing the movement and safety areas, and could be combined with the training for persons accessing both the movement and non-movement areas. The FAA proposes the following exceptions for this training requirement:

- Airman exercising the privileges of an applicable airman certificate;
- Persons escorted by a trained individual; and
- Other persons identified in the certificate holder's ACM.

A person would complete this training prior to accessing the non-movement area, and at least yearly thereafter. The FAA intends to make this requirement effective one year after publication of the final rule to allow certificate holders time to develop a training program and complete training for all personnel accessing the non-movement area. After the effective date of this proposal, if adopted, all persons would complete the training prior to accessing the non-movement area, unless escorted by a trained individual.

The certificate holder would provide recurrent training as often as necessary to enable the person to maintain a satisfactory level of proficiency. Appropriate schedules for recurrent training may vary widely among certificate holders and individuals because of the specific needs of each certificate holder and individual. However, this recurrent training would occur at least yearly. Certificate holders may consider requiring recurrent training when a vehicle operator renews an expired airport identification badge or when a tenant renews a lease agreement.

All training curricula would include, at a minimum, airport familiarization with airport markings, signs, and lighting, procedures for operating in the non-movement area, and duties required by the ACM or regulations. Although AC 150/5210–20 provides detailed guidance on developing training curricula, a certificate holder could determine its optimal method for completing this training. In addition to providing training on these minimum components, the FAA recommends on-the-job training for personnel prior to unescorted access to the airside of the airport.

The curricula would address procedures for access to, and operation in, ramp and apron areas. Inadvertent entry by vehicles onto movement and non-movement areas of an airport poses a danger to both the vehicle operator and aircraft attempting to land, take off, or maneuver on the airport.

Methods for controlling access to the airside depend on the type and location of the airport. The training would discuss the methods for controlling access and how a person can ensure those methods are effective. The Airport Layout Plan is a useful tool for identifying access points and general layout of the airfield.

The curricula also would include procedures for operating in the non-movement area including wearing personal protective equipment and high visibility clothing, cautious driving and speed awareness, and backing up and spotting obstructions. The training would stress that aircraft always have the right-of-way over vehicles when maneuvering on non-movement areas.

Other duties that a person might encounter and require training for include fire prevention, hazardous weather, foreign object damage (FOD) prevention, reporting accidents/incidents, safety around propeller and jet engine intakes, approaching an arriving aircraft, safely positioning ground servicing equipment, and other safety topics workers may encounter specific to the airport. A certificate holder would retain records of this training for 24 months as required by existing § 139.301(b)(1).

Additionally, the FAA proposes to clarify the training requirement for persons accessing the movement and safety areas by substituting all "persons" for all "personnel" in § 139.303(c). The FAA has interpreted personnel to be broader than airport employees, but this proposed clarification would avoid confusion in interpreting the rule.

Runway Pavement Surface Evaluation

In an effort to improve safety, the FAA proposes a requirement to evaluate the surface characteristics of runways. This proposed requirement adopts existing guidance specified in Advisory Circular 150–5320–12C, *Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.*

Because runway friction characteristics change over time, periodic runway friction measurements are needed not only to identify unacceptable runway friction levels but also to identify trends in changing runway conditions. Airport operators need to locate and restore areas on the pavement surface where friction has deteriorated below acceptable levels for aircraft braking performance.

The FAA proposes amending § 139.305 to require airports to establish

and implement a runway friction testing program for each runway used by jet aircraft. A certificate holder with jet aircraft traffic should schedule periodic friction evaluations of each runway that accommodates jet aircraft. Components of the program would include a testing frequency that takes into consideration the volume and type of traffic as well as friction readings from CFMEs operated by trained personnel. Corrective action would be required, as needed. The airport operator also should locate potential hydroplaning areas as well as measure the depth and width of a runway's grooves to check for wear and damage.

Airports would establish and implement a program for testing performance of grooves and transverse slopes. Components of the program would include, at a minimum, instructions and procedures for conducting visual inspection of runway surfaces, taking the runway surface material and volume of traffic into consideration. On randomly-selected trafficked portions of the runway, the airport operator would have to measure the width and depth of grooves, inspect transverse slopes for desired performance, and take corrective action if testing reveals deterioration below established levels.

Surface Movement Guidance Control System (SMGCS)

Each certificate holder with FAA-approved takeoff or landing operations below 1,200 feet RVR must provide appropriate low-visibility surface enhancements and ground movement procedures. The basis for the approval of low-visibility operations for each runway would be incorporated in the certificate holder's SMGCS plan. The plan would identify the responsibilities of all parties involved in low-visibility operations (e.g., airport operator, ATC, airport rescue and fire fighting (ARFF), air carriers, pedestrians, and ground vehicle operators). The plan should identify how and when these responsibilities will be carried out (*e.g.,* the plan may identify different requirements for operations between 1,200 feet RVR and 600 feet RVR, and those operations below 600 feet RVR). Accordingly, the FAA proposes to amend § 139.203 to require the ACM contain a SMGCS plan for airports approved for operations below 1,200 feet RVR. The specific responsibilities are addressed in the proposed amendments to § 139.303 (personnel/training requirements), § 139.311 (marking, signs, and lighting), § 139.327 (self-inspection program), § 139.319 (aircraft rescue and firefighting (ARFF): Operational requirements), and § 139.329 (pedestrians and ground vehicles).

A SMGCS plan would facilitate the safe movement of aircraft and vehicles on the airport by establishing more rigorous control procedures and requiring enhanced visual aids. Additionally, the ability to conduct low visibility operations allows a certificate holder to stay open during poor weather conditions, thus reducing flight delays and cancellations.

Only certificate holders that conduct low-visibility operations would be required to develop and implement a SMGCS plan. These plans would vary among airports because of local conditions, and would be subject to FAA approval.

Applicability of Part 139

Currently, § 139.1(a)(1) states that an airport must be certificated under part 139 to host scheduled passenger-carrying operations of an air carrier operating aircraft designed for more than nine passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority.

The current wording has created confusion regarding operation of a particular aircraft type, a Cessna 208B Caravan, because it is certificated as a single-pilot aircraft, but has two pilot seats. In non-revenue service, the second pilot seat may be occupied by a passenger. However, in scheduled passenger-carrying operations the operating rule, § 135.113, prohibits passengers from occupying the second pilot seat, which means there are not more than nine passenger seats during those operations.

This proposal would clarify that the applicability of part 139 is based only on passenger seats in passenger-carrying operations as determined by either the regulations under which the operation is conducted or the aircraft type certificate.

Certification and Falsification

To ensure the reliability of records maintained by a certificate holder and reviewed by the FAA, this proposal would prohibit intentionally false or fraudulent statements concerning an AOC. Specifically, the FAA proposes a new § 139.155 that prohibits the making of any fraudulent or intentionally false statement on an application for a certificate; the making of any fraudulent or intentionally false statement on any record or report required by the FAA; and the reproduction or alteration, for a fraudulent purpose, of any FAA certificate or approval. The FAA proposes to suspend or revoke an AOC for violation of any of these prohibitions by an owner, operator, or other person acting on behalf of the certificate holder. The FAA also proposes to suspend or revoke any other FAA certificate issued to the person committing the act. The requirement is similar to falsification prohibitions in 14 CFR parts 43, 61, 65, and 67.

Paperwork Reduction Act

This proposal contains an extension of a currently approved collection OMB–2120–0675 subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The title, description, and number of respondents, frequency of the collection, and estimate of the annual total reporting and recordkeeping burden are shown below.

Title: Safety Enhancements to 14 CFR part 139, Certification of Airports

Summary: If adopted, § 139.303(g) will require training for all personnel authorized to access the non-movement area as designated in the Airport Certification Manual, regardless of their duties or duration of access.

Affected Public: A total of 256,000 people would need to have their training records added to the airport's records.

Frequency: Once a year.

Estimated average burden per employee: 0.1 hour per employee.

Estimated Annual Burden Hours: $256{,}000 \times .05 = 12{,}800$.

Estimated Annual Burden Costs: $12{,}800 \times \$15.00 = \$192{,}000$.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

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

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

International Compatibility

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. Readers seeking greater detail should read the full regulatory evaluation, a copy of which is in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The estimated cost of this proposed rule is $32.3 million in present value terms. The estimated potential benefits of adding safety enhancements to part 139 are $47.0 million in present value terms.

Who is Potentially Affected by this Rule?
- Owners and operators of part 139 airports
- Tenants and tenant employees at part 139 airports
- Users of part 139 airports

Assumptions:

Discount rate—7%

Period of analysis—11 years because this provides a time period sufficient to determine an accurate estimate of benefits and costs

Value of a fatality avoided—$6.0 million

Benefits of This Rule

The benefits of this proposed rule consist of safety enhancements to part 139. These enhancements include providing additional training for people with access to the non-movement areas at airports which should reduce the number and severity of non-movement area accidents; adding a regulatory requirement for Runway Surface Evaluation Benefits, which should ensure reliability of runway surfaces in wet weather; and the development and integration of approved SMGCS plans into an ACM, which should reduce the number of diversions in bad weather. Over the 11-year period of analysis, the potential present value benefits of the proposed rule would be $47.0 million.

Costs of This Rule

This proposed rule's present value costs consist of $31.6 million for training and $0.7 million for the development and integration of approved SMGCS plans into airport ACMs. The total present value cost of this rule is about $32.3 million.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule has two costs, a cost for training in the non-movement area and a cost for the development and inclusion of a SMGCS plan in the ACM.

Training costs apply to all airports, regardless of size. For the training costs, the FAA estimates that approximately 20% or 111 of the total 556 certificated airports are small entities. This is a substantial number of small entities. The FAA believes that there would be a significant economic impact on these small entities. However, the FAA proposes to mitigate the costs of the rule to small entities through one or more of the following items:

- The minimum training curricula required by the proposed rule consists of airport familiarization, procedures for operating in the non-movement area, and duties required by the ACM or regulations. The FAA would provide guidance through Advisory Circulars (ACs) and/or other publications and consultations.
- The training materials can come from a number of sources, including the following:
  - *AC No: 150/5210–21, Date: 9/23/03, Subject: Announcement of Availability: Airport Safety Training Programs for Mechanics and Ramp Personnel* This AC provides information on how to obtain two interactive CD–ROMs that inform mechanics and ramp personnel about important practices for preventing runway incursions, ramp safety practices, proper taxi procedures, and proper tug and tow practices. The CD–ROMs may be obtained free of charge from the FAA. The two CD–ROMS are:
  - *Taxi 101*—This training program covers: Weather; airport familiarization; runway and

taxiway signs; surface markings and lighting: aircraft preflight; flight procedures; and air traffic control procedures.

- *Tug & Tow 101*—This training program covers personal safety; ramp operations and safety; aircraft and engine hazards; communications; push back; aircraft towing; airport signs, surface and markings; weather; and air traffic control procedures.
- *AC No.: 150/5210–20: Change 1: Date: March 31, 2008: Subject: Ground Vehicle Operations On Airports.* This AC and its attached appendices is to provide guidance to airport operators in developing training programs for safe ground vehicle operations and pedestrian control on the airside of an airport. This includes both movement and non-movement areas, ramps, and aprons. This AC contains recommended operating procedures, a sample training curriculum (Appendix A), and a sample training manual (Appendix B).
- *The American Association of Airport Executives* (AAAE)—provides many training materials at low costs to airports.
- Private companies also sell many training materials.
- Training materials can include printed media, computer media, or any other effective media.

The Surface Movements Guidance and Control System (SMGCS) costs in this rule apply only to airports that have chosen to implement a SMCGS plan. The FAA estimates that there are currently 54 airports with approved SMCGS plans and 78 airports that are currently seeking to provide for low visibility operations but do not yet have a SMGCS plan. The costs of SMGCS plans may be significant. However, the cost of SMGCS plans has been and will be mitigated by AC guidance on how to prepare a plan with an example plan.

AC No.: 150/5320–12C, Date: 8/25/2004, Subject: Surface Movements Guidance and Control System contains information on how to prepare a SMGCS plan and an example of a typical SMGCS plan. It should be noted that this AC has a provision for the performance of a benefit-cost study before developing a detailed SMGCS plan. Therefore, any small entity developing a SMGCS plan would likely first determine that it would be cost-beneficial.

The actual SMGCS plan for a single runway need not be longer than 15 pages. The FAA will visit each airport to oversee and help with the SMGCS plans.

The FAA has considered alternatives to the proposed rule. For the training portion of the rule the FAA has considered doing nothing. However, this would not result in any improved safety in the ramp area. The FAA also considered a much more stringent curriculum for the ramp safety training. However, this would not allow for the differences between airports.

Therefore, the FAA believes the proposed rule is the most effective to improve ramp safety. In the case of SMGCS, most airports already have an alternative available to them. They can decide whether or not they want SMCGS facilities.

The FAA believes the proposed rule would have a significant economic impact on a large number of small entities. However the FAA believes that any adverse economic impacts that would result from the proposed rule could be substantially reduced by positive mitigations by the FAA. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed the proposal under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this proposal are owned, operated, or regulated by a local government body (such as a city or county government), which, in turn, is incorporated by or as part of a State. Some airports are operated directly by a State. This action would have low costs of compliance compared with the resources available to airports, and it would not alter the relationship between certificate holders and the FAA as established by law.

Accordingly, the FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this rulemaking does not have federalism implications. The FAA will mail a copy of the NPRM to each State government specifically inviting comment.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments we receive on or before the closing date for comments. The agency will consider comments filed late if it is possible to do so without incurring expense or delay. This proposal may change in light of comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the agency is aware of proprietary information filed with a comment, it is not placed in the docket. It is held in a separate file to which the public does not have access, and noted in the docket that the agency received it. If the FAA receives a request to examine or copy this information, it is treated as any other request under the Freedom of Information Act (5 U.S.C. 552). The agency processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's web page at *http://www.gpo.gov/fdsys/search/home.action.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of title 14, Code of Federal Regulations, as follows:

PART 139—CERTIFICATION OF AIRPORTS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44709, 44719

2. Amend § 139.1 by revising paragraph (a) to read as follows:

§ 139.1 Applicability.

(a) This part prescribes rules governing the certification and operation of airports in any State of the United States, the District of Columbia, or any territory or possession of the United States serving any—

(1) Scheduled passenger-carrying operations of an air carrier operating aircraft configured for more than 9 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority; and

(2) Unscheduled passenger-carrying operations of an air carrier operating aircraft configured for at least 31 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority.

* * * * *

3. Amend § 139.5 by adding the definition of "non-movement area" in alphabetical order to read as follows:

§ 139.5 Definitions.

* * * * *

Non-movement area means the area, other than that described as the movement area, used for the loading, unloading, parking, and movement of aircraft on the airside of the airport (including ramps, apron areas, and on-airport fuel farms).

* * * * *

4. Add § 139.115 to subpart B to read as follows:

§ 139.115 Falsification, reproduction, or alteration of applications, certificates, reports, or records.

(a) No person shall make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate or approval under this part;

(2) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;

(3) Any reproduction, for a fraudulent purpose, of any certificate or approval issued under this part.

(4) Any alteration, for a fraudulent purpose, of any certificate or approval issued under this part.

(b) The commission by any owner, operator, or other person acting on behalf of a certificate holder of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any certificate or approval issued under this part and held by that certificate holder and any other certificate issued under this title and held by the person committing the act.

5. Amend § 139.203 by redesignating paragraph (b)(29) as (b)(30) and adding a new paragraph (b)(29) to read as follows:

§ 139.203 Contents of Airport Certification Manual.

* * * * *

(b) * * *

Manual elements	Airport certificate class			
	Class I	Class II	Class III	Class IV
* * * *	*		*	*
29. For airports approved for low visibility takeoff or landing operations below 1200 feet runway visual range, a Surface Movement Guidance Control System (SMGCS) plan	X	X	X	X
* * * *	*		*	*

6. Amend § 139.303 by revising paragraph (c) introductory text, redesignating paragraph (c)(5) as (c)(6), and adding a new paragraph (c)(5) and adding paragraph (g) to read as follows:

§ 139.303 Personnel.

* * * * *

(c) Train all persons who access movement areas and safety areas and perform duties in compliance with the requirements of the Airport Certification Manual and the requirements of this part. This training must be completed prior to the initial performance of such duties and at least once every 12 consecutive calendar months. The curriculum for initial and recurrent training must include at least the following areas:

* * * * *

(5) When required, duties and procedures for low visibility SMGCS operations identified in the SMGCS plan.

* * * * *

(g)(1) Train all persons who are authorized to access the non-movement area as designated in the Airport Certification Manual, regardless of their duties or duration of access. The certificate holder must ensure training is completed prior to a person's access to the non-movement area and at least once every 12 consecutive calendar months thereafter.

(2) The curriculum for initial and recurrent training must include at least the following areas:

(i) Airport familiarization, including airport marking, signs, and lighting.

(ii) Procedures for access to, and operation in, the non-movement area.

(iii) Duties required under the Airport Certification Manual and the requirements of this part.

(3) The training requirements in this paragraph (g) do not apply to airmen exercising the privileges of an applicable airman certificate, persons being escorted by a trained individual, and other persons identified in the FAA-approved Airport Certification Manual.

7. Amend § 139.305 by redesignating the paragraph (c) as (e) and by adding new paragraphs (c) and (d) to read as follows:

§ 139.305 Paved areas.

* * * * *

(c) Each certificate holder must establish and implement a runway friction testing program. The program must include, at a minimum, instructions and procedures for:

(1) Conducting friction testing on runways used by turbojet aircraft traffic.

(2) Maintaining a friction testing frequency that takes into consideration the volume and type of turbojet aircraft traffic and the actual friction conditions of the runway pavement that is conducted at least yearly.

(3) Conducting friction testing using calibrated continuous friction measuring equipment with a self-wetting system.

(4) Ensuring that the friction testing is performed by individuals qualified to use the equipment.

(5) Taking corrective action when testing reveals deterioration below acceptable levels as specified in the certificate holder's Airport Certification Manual.

(d) Each certificate holder must establish and implement a program for testing performance of grooves and transverse slopes. The program must include, at a minimum, instructions and procedures for:

(1) Conducting visual inspection of runway surfaces on a frequency that takes into consideration runway surface materials, volume of runway traffic, and conditions of runway pavement.

(2) On randomly-selected portions of the runway, measuring the width and depth of grooves.

(3) On randomly-selected portions of the runway, measuring the transverse slopes.

(4) Taking corrective action when testing reveals deterioration below acceptable levels, as specified in the certificate holder's Airport Certification Manual.

* * * * *

8. Amend § 139.311 by adding paragraphs (a)(6) and (c)(6) to read as follows:

§ 139.311 Marking, signs, and lighting.

(a) * * *

(6) SMGCS markings on low visibility taxi routes identified in the approved SMGCS plan.

* * * * *

(c) * * *

(6) SMGCS lighting to support low visibility taxi operations identified in the approved SMGCS plan.

* * * * *

9. Amend § 139.319 by adding paragraph (i)(2)(xii) to read as follows:

§ 139.319 Aircraft rescue and fire-fighting: Operational requirements.

* * * * *

(i) * * *

(2) * * *

(xii) Procedures for low visibility operations as identified in the approved SMGCS plan.

* * * * *

10. Amend § 139.327 by adding paragraph (a)(4) to read as follows:

§ 139.327 Self-inspection program.

(a) * * *

(4) When required to support low visibility SMGCS operations in accordance with the approved SMGCS plan.

* * * * *

11. Amend § 139.329 by redesignating paragraphs (e) and (f) as (f) and (g), respectively, by adding a new paragraph (e), and by revising newly redesignated paragraph (f) to read as follows:

§ 139.329 Pedestrians and ground vehicles.

* * * * *

(e) Establish and implement procedures for the safe and orderly access to and operation in movement areas and safety areas by pedestrians and ground vehicles during low visibility conditions as identified in the approved SMGCS plan.

(f) Ensure that each employee, tenant, or contractor is trained on procedures required under paragraphs (b) and (e) of this section, including consequences of noncompliance, prior to moving on foot, or operating a ground vehicle, in movement areas or safety areas; and

* * * * *

Issued in Washington, DC, on January 19, 2011.

Michael J. O'Donnell,

Director of Airport Safety and Standards.

[FR Doc. 2011–2164 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 101130598–1052–02]

RIN 0625–AA87

Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; proposed modification; extension of comment period.

SUMMARY: On December 28, 2010, the Department of Commerce ("the Department") published a proposed rule and proposed modification in the **Federal Register** requesting comments regarding the calculation of the weighted average dumping margin and antidumping duty assessment rate in certain antidumping duty proceedings. The Department has decided to extend the comment period, making the new deadline for submission of public comment February 18, 2011.

DATES: To be assured of consideration, written comments must be received no later than February 18, 2011.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2010–0011, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625–AA87.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this proposed rule and proposed modification will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and to the Department's Web site at *http://www.trade.gov/ia/.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202)–482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Quentin M. Baird, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)–482–0834.

SUPPLEMENTARY INFORMATION: On December 28, 2010, the Department published a proposed rule and proposed modification in the **Federal Register** requesting comments regarding the calculation of the weighted average dumping margin and antidumping duty assessment rate in certain antidumping duty proceedings (75 FR 81533). That proposed rule and proposed modification indicated that public comments are due on January 27, 2011. In response to requests to extend this deadline, and to ensure parties have the opportunity to prepare thorough and comprehensive comments, the Department is extending the deadline for submitting comments by twenty-two days, until February 18, 2011. The Department will consider all comments received before the close of the comment period. Rebuttal comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Dated: January 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1946 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR 5395–P–01]

RIN 2502–AI92

Federal Housing Administration (FHA): Refinancing an Existing Cooperative Under Section 207 Pursuant to Section 223(f) of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to revise its regulations governing the eligibility for FHA insurance of mortgages used for the purchase or refinancing of existing multifamily housing projects. Although the statutory language authorizing such insurance does not distinguish between rental or cooperative multifamily projects, HUD's current regulations limit FHA insurance to existing rental projects. Given the current crisis in the capital markets and the significant downturn in the multifamily market, the Department has determined that this is an appropriate time to reconsider this regulatory imposed limitation with respect to the mortgage insurance for the refinancing of cooperative projects. As mortgage lenders strive to increase capital reserves and tighten underwriting standards, the availability of financing for multifamily housing has been reduced. FHA mortgage insurance could significantly improve the availability of funds and permit more favorable interest rates than would otherwise be likely. Accordingly, this proposed rule would revise HUD's regulations to enable existing multifamily cooperative project owners to obtain FHA insurance for the refinancing of existing indebtedness.

DATES: *Comment Due Date:* April 4, 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. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *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.

2. *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.

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: Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000; telephone number 202–708–1142 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 223(f)(1) of the National Housing Act (12 U.S.C. 1715n(f)(1)) (NHA), FHA is authorized to insure mortgages executed in connection with the purchase or refinancing of an existing multifamily housing project. The existing multifamily housing project to be purchased or refinanced may have been financed originally with conventional debt, equity, or FHA insured mortgages. The section 223(f) program insures lenders against loss on mortgage defaults and allows for long term mortgages (up to 35 years). In general, a project is eligible for section 223(f) mortgage insurance if the sponsor can demonstrate that there is a definite market demand, and that the project is economically self-sufficient.

HUD's regulations implementing the section 223(f) program are codified at 24 CFR part 207 (entitled "Multifamily Housing Mortgage Insurance"). Section 207.1 of these regulations cross references to the eligibility requirements for existing projects contained in 24 CFR 200.24 and makes the eligibility requirements applicable to multifamily project mortgages insured under section 24 CFR part 207.[1] Section 200.24 provides that "a mortgage financing the purchase or refinance of an existing *rental* housing project * * * may be insured pursuant to the provisions of section 223(f) of the [National Housing] Act * * *" (emphasis added). Thus, while the statutory language of section 223(f) authorizes FHA mortgage insurance for existing multifamily housing projects, irrespective of whether the project is for rental or cooperative housing, HUD's regulations limit section 223(f) financing to rental housing.

Given the current downturn in the mortgage lending market, HUD has decided to reconsider the regulatory imposed limitation on section 223(f) mortgage financing to rental projects. A recent HUD report on U.S. Housing Market Conditions [2] indicated that performance in the multifamily (five or more units) housing sector continued to be weak in the third quarter of 2009. The report further notes that:

During the years of rapid home price appreciation from 2004 through 2006 (and possibly into 2008 for multifamily housing) the aggressive underwriting standards that characterized the subprime home mortgage market were mirrored in the multifamily mortgage market. While subprime mortgagees used hybrid adjustable-rate mortgages to help borrowers afford higher priced single-family homes, some multifamily lenders employed pro-forma underwriting based on aggressive estimates of future earnings and 5 to 10 year, interest only balloon and other short-term mortgages to support rising property prices in similarly overheated multifamily housing markets. Some of these mortgages will be due in the next few years.[3]

Like single-family housing financing, multifamily housing is thus facing a credit crunch. Lenders' efforts to increase capital reserves and loan committee efforts to tighten underwriting standards both reduce the availability of financing for all multifamily housing. Credit constraints thus exacerbate trends in an already weak multifamily market. FHA mortgage insurance could both improve the availability of funds to this sector and permit more favorable interest rates than would otherwise be likely. This credit enhancement would provide needed support to a market segment which is currently experiencing diminished operating cash flows and depreciated collateral values.

The lack of financing is a particular problem for cooperatives. Cooperatives contend with legal restrictions on cooperative share transfers and many require approval by the board of a cooperative for some membership or operational changes. These issues raise concerns with traditional financial institutions. In addition, "affordable" cooperatives, which have low initial purchase prices, limited maintenance fees, and a cap on unit resale prices, face further challenges because the potential for generating new income through turnover of units and additional assessments is low. HUD has received inquiries from several existing cooperatives that have expressed an interest in refinancing their underlying mortgages. The average age of these projects is 35 years.

Refinancing at the current low interest rates could improve the viability of these types of cooperative housing projects in several ways. By reducing the servicing cost of their underlying mortgage, often substantially due to a high rate when the loan was originally made, a board of directors can accomplish a number of desirable goals. Shareholders could finance the cost of necessary capital improvement projects, such as façade restoration or elevator

[1] The regulations codified at 24 CFR part 200 (entitled "Introduction to FHA Programs") set forth, in a single location of the Code of Federal Regulations, requirements that are generally applicable to FHA programs. Section 207.1 actually cross-references to the "eligibility requirements set forth in 24 CFR part 200, subpart A * * *" Section 200.24 is the relevant eligibility provision for existing multifamily projects in subpart A of 24 CFR part 200.

[2] 2009 HUD Office of Policy Development and Research, *U.S. Housing Market Conditions* November 2009 p. 4, 5. The report notes that in the production sector, building permits, starts, and completions all declined. The absorption rate of new rental units fell during the third quarter, and the rental vacancy rate increased sharply.

[3] See page 5 of the report referenced in footnote 2.

renovations. Refinancing would also allow cooperative boards to avoid special assessments, a source of unexpected financial stress for many residents when doubled up with existing monthly maintenance fees. These types of assessments can be particularly painful during economic downturns when unemployment is relatively high in some urban areas.

Facilitating the refinancing of cooperatives through mortgage insurance issued under section 223(f) of the NHA would thus help to further HUD's mission of preserving affordable housing by assisting eligible cooperative projects to obtain refinancing to make necessary repairs and/or consolidate more expensive outstanding debt, thereby preserving affordable housing stock. Therefore, HUD is currently proposing to remove this regulatory limitation in recognition of cooperative financing needs.

II. This Proposed Rule

This proposed rule would revise § 200.24 of HUD's regulations to enable owners of cooperative projects to obtain FHA insurance for their mortgage loans. Specifically, the proposed rule would amend § 200.24 to provide that "a mortgage financing the purchase or refinance of an existing rental housing project or refinance of the existing debt of an existing cooperative project under Section 207 of the [National Housing] Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility, or board and care home, or any combination thereof, under Section 232 of the [National Housing] Act, may be insured pursuant to provisions of Section 223(f) of the [National Housing] Act and such terms and conditions established by HUD." Extending the section 223(f) mortgage insurance program to refinancing of the debt of multifamily cooperative housing projects is consistent with HUD's strategic goals of recreating a strong housing finance system and promoting affordable, financially sustainable multifamily housing options. When combined with judicious use of reserves to make capital improvements to maintain the property, the credit enhancement provided by this proposed rule will help rejuvenate properties and enhance the economic life of multifamily cooperative housing projects.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This proposed rule was determined to be 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—Small Business

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. As discussed above, the purpose of the proposed rule is to expand eligibility for financing under section 223(f) to enable owners of multifamily cooperative housing projects to refinance their existing mortgage debt with FHA insurance. Owners of such projects will be able to obtain 223(f) financing under the same terms and conditions as currently eligible owners of multifamily rental projects. Cooperative housing owners will not be subject to any additional procedures or required to incur any additional costs.

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

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI 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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments, and is not required by statute, or (2) the rule 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.

Paperwork Reduction Act

The information collection requirements for this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–XXXX. In accordance with the Paperwork Reduction Act, an agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA mortgage insurance program is 14.155.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Revise § 200.24 to read as follows:

§ 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project or refinance of the existing debt of an existing cooperative project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility, or board and care home, or any combination thereof, under section 232 of the Act, may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by HUD.

Dated: December 20, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–2170 Filed 1–31–11; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15 and 73

[ET Docket No. 10–235; FCC 10–196]

Innovation in the Broadcast Television Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission initiated a process to further its ongoing commitment to addressing America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. The approach proposed is consistent with the goal set forth in the *National Broadband Plan* (the "*Plan*") to repurpose up to 120 megahertz from the broadcast television bands for new wireless broadband uses through, in part, voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of these new applications.

DATES: Comments must be filed on or before March 18, 2011, and reply comments must be filed on or before April 18, 2011.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–235, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: *Alan.Stillwell@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* ET Docket No. 10–235, FCC 10–196, adopted and released on November 30, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Pursuant to §§ 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR 1.415, 1.419, and 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 2, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries

must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rulemaking* (*NPRM*), the Commission initiated a process to further its ongoing commitment to addressing America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. Through this NPRM, the Commission takes preliminary steps to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions it expects to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband. At the same time, the Commission recognizes that over-the-air TV serves important public interests, and its approach will help preserve this service as a healthy, viable medium. The approach the Commission proposed is consistent with the goal set forth in the National Broadband Plan (the "Plan") to repurpose up to 120 megahertz from the broadcast television bands for new wireless broadband uses through, in part, voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of new applications.

2. The specific bands under consideration are the low VHF spectrum at 54–72 MHz (TV channels 2–4) and 76–88 MHz (TV channels 5 and 6), the high VHF spectrum at 174–216 MHz (TV channels 7–13), and the UHF bands at 470–608 MHz (TV channels 14–36) and 614–698 MHz (TV channels 38–51); for purposes of this NPRM, the Commission will refer to this spectrum as the "U/V Bands." This NPRM proposes three actions that will establish the underlying regulatory framework to facilitate wireless broadband uses of the U/V Bands, while maintaining current license assignments in the band. First, the Commission proposes to add new allocations for fixed and mobile services in the U/V Bands to be co-primary with the existing broadcasting allocation in those bands. The additional allocations would provide the maximum flexibility for planning efforts to increase spectrum available for flexible use, including the possibility of assigning portions of the U/V Bands for new mobile broadband services in the future. Second, the Commission proposes to establish a framework that, for the first time, permits two or more television stations to share a single six-megahertz channel, thereby fostering efficient use of the U/V Bands. Third, the Commission intends to consider approaches to improve service for television viewers and create additional value for broadcasters by increasing the utility of the VHF bands for the operation of television services.

3. By taking these important steps to facilitate wireless broadband uses in the U/V Bands, this NPRM is the first in a series of actions that will allow us to make progress toward our goal of improving efficient use of the bands and enable ongoing innovation and investment through flexible use. The Commission intends to propose further actions consistent with other of the *Plan's* recommendations for the U/V Bands, including, but not limited to, the process of voluntarily returning broadcast licenses to the Commission and the licensing process and service rules for new fixed and mobile wireless communications services. As part of that process, the Commission will address the *Plan's* proposal for channel re-packing, the band plan for recovered spectrum and other related issues and will provide full opportunity for public comment on those issues at that time.

4. *The National Broadband Plan.* The *Plan* was issued on March 17, 2010. As required under the Recovery Act, the *Plan* seeks to ensure that every American has access to broadband capability and establishes clear benchmarks for meeting that goal. The *Plan* recommends making 500 megahertz of spectrum between 225 MHz and 3.7 GHz newly available to meet the needs of mobile, fixed and unlicensed wireless broadband in the next 10 years and for providing 300 megahertz of that amount for mobile flexible uses within 5 years, of which up to 120 megahertz would come from the broadcast television bands.

5. This NPRM takes the first step towards achieving these important objectives by proposing additional frequency allocations, a framework that will permit two or more television stations to share a single six-megahertz channel, and changes to rules for use of the VHF band to improve its utility for television service. The Commission recognizes that broadcast television provides an important service to the public, and our actions in this proceeding will take full account of the vital role played by over-the-air television while increasing the flexible use of spectrum in a manner that meets consumer and business needs. The Commission remains committed to preserving the free, over-the-air broadcast television service and maintaining the diversity of local voices and important informational and entertainment benefits it provides the American public.

6. It is our strong intention to provide for an orderly transition of a portion of the U/V Bands to flexible use, in a manner that will minimize any impact on over-the-air television broadcasting and the consumers it serves, both off-the-air and through multichannel video program distributors. In this regard, broadcast television stations and other primary services operating on the spectrum to be recovered will be co-primary with and be protected from interference from new broadband services for as long as they remain on channels in that spectrum.

7. To facilitate the recovery of underutilized television channels while continuing to maintain existing broadcast television services, the Commission also proposes in this NPRM new rules that would allow a television service licensee to voluntarily reduce its occupation of spectrum by offering to operate on a shared six megahertz channel. Under this provision, all of the stations sharing a channel would broadcast their services through the same ATSC digital television signal using that signal's multicasting capabilities. Each licensee would have the same rights and service obligations as a licensee operating from a full channel today, including the right to carriage by cable and satellite providers pursuant to the rules for mandatory carriage or retransmission consent. The Commission believes that channel sharing could be beneficial to certain licensees, particularly those that wish to save on their operating costs or minimize the amount of their investment in spectrum or transmission facilities. In addition, channel sharing

could provide an incentive for broadcasters to relinquish spectrum for a portion of the proceeds of the revenues of a U/V Band spectrum auction, subject to Congress providing the Commission the authority to conduct an incentive auction. Further, channel sharing could offer opportunities for broadcasters serving minority, foreign language and niche interests that might have smaller audiences and lower income to operate at reduced cost and thereby improve their viability. In allowing stations to share channels, the Commission notes that in some instances changes in the operation of television stations could raise the possibility of interference to radio astronomy operations on channel 37 or to services operating on frequencies immediately above channel 51. It is the Commission's intent that any channel or other facilities changes that might be requested as part of sharing agreements not result in increased interference to radio astronomy operations on channel 37 or to operations of other services above channel 51. The Commission requests comments on specific steps that could be taken as part of the implementation of its sharing rules to mitigate the potential for such interference. The Commission describes its initial proposed rules for channel sharing by television licensees in this NPRM. The Commission is also aware that broadcasters have encountered technical issues in using VHF channels to provide satisfactory service to viewers. It intends to consider rule changes and other alternatives for making the VHF channels more desirable for DTV operation. The Commission's proposals for adding new allocations to the U/V bands, channel sharing by television stations and improving television service from VHF channels are discussed.

Spectrum Allocations

8. *New Spectrum Allocations.* The Commission proposes changes to the U.S. Table of Frequency Allocations in § 2.106 of the rules that would allow it to make a significant portion of the spectrum currently used for broadcast television available for flexible use, including fixed and mobile wireless broadband services. To facilitate repurposing of a portion of the U/V Bands in a later action, the Commission proposed in this NPRM to add allocations for fixed and mobile services in the U/V Bands (excluding channel 37) for non-Federal use, to be co-primary with that for broadcast services. This proposal would also expand the existing land mobile allocation in the areas where PLMRS and CMRS systems operate on specified frequencies in the 470–512 MHz band to be the same more generalized and flexible mobile allocation that would be specified for other frequencies in the U/V Bands.

9. These new allotments would allow us to consider the entire range of the U/V Bands in selecting the specific frequencies to be designated for new licensed and/or unlicensed uses. This approach will provide maximum flexibility in planning for the future assignment of a portion of the U/V Bands for flexible use, including new broadband services. The Commission's goal is to adopt a band that will provide for flexible use while continuing to support the needs of the television service. It is not proposing to change or add to the existing allocations for land mobile (medical telemetry and medical telecommand) and radio astronomy that are at 608–614 MHz (at channel 37). The Commission requests comments on this proposed plan for adding new allocations to the U/V Bands and invite suggestions for alternative approaches.

Broadcast Television Channel Sharing

10. The *Plan* recommends that, to facilitate the recovery of spectrum, the Commission initiate a rulemaking proceeding to "establish a licensing framework to permit two or more stations to share a six-megahertz channel." The Commission believes that the option of channel sharing, in addition to aiding in the broadband goals of the *Plan,* could also be beneficial to the television industry and to viewers. Television stations operating on shared channels could use the cost savings and additional income from such arrangements to strengthen their financial condition and to develop new and enhanced programming. Channel sharing could also provide existing small- and minority-owned stations an opportunity to enhance or preserve their local program offerings. The Commission anticipates providing broadcast stations an opportunity to voluntarily elect to share a channel. The Commission therefore seeks comment in this proceeding on the development of an appropriate regulatory structure for voluntary television channel sharing that will preserve over-the-air television as a healthy, viable medium going forward, in a way that would benefit consumers overall, while establishing mechanisms to make available additional spectrum for flexible broadband uses.

11. The Commission envisions, consistent with the Plan, that two stations could generally broadcast one primary HD video stream each over a shared six-megahertz channel or more than two stations broadcasting in SD (not HD) could share a six-megahertz channel. As noted in the Plan, "numerous permutations are possible, including dynamic arrangements whereby broadcasters sharing a channel reach agreements to exchange capacity to enable higher or lower transmission bit rates depending on market-driven choices." In this regard, the Commission observes that at the Broadcast Engineering Forum participants expressed concerns that sharing a single channel would not be practical because it would not provide sufficient transmission capacity for two or more stations to offer the highest quality HD programming simultaneously. Stations were also concerned that channel sharing could impact or eliminate current and future DTV services, such as expansion of high-definition programming and deployment of mobile television service. The Commission intends to consider these issues in this proceeding and welcomes comments on these concerns.

12. Other approaches to channel sharing that involve sub-channel services such as mobile broadcast may also be possible. The Commission seeks comment on those approaches. The only requirement would be that all stations utilizing a shared channel be required to retain at least enough spectrum to operate one SD channel. The Commission seeks comment on this approach and whether stations sharing a single channel will be able to continue to comply with the requirement to operate at least one SD channel.

13. In designing a channel sharing plan that will result in the more efficient use of television spectrum and free channels for flexible use, the Commission indicated that its goal will be to retain as much of its existing policy framework for allocating, licensing, and operating television stations as possible. Despite sharing a single channel and transmission facility, each station will continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies. Each station's programming obligations will remain the same (*e.g.,* children's programming, political broadcasting, EAS, indecency), and a station will not be responsible for the programming or violations of any other station sharing its channel. In addition, stations sharing a channel will retain their rights to mandatory carriage on multiple video program distributors (MVPDs). While the licensees sharing a given channel and facility will independently maintain their own

rights and obligations under their respective licenses, the Commission does not envision that channel sharing, from a technological perspective, would entail a fixed split of the six-megahertz channel into two three-megahertz blocks. Rather, the capacity of the six-megahertz would be shared and the Commission would leave it up to the licensees to determine the precise manner in which that capacity would be shared. Moreover, the Commission observed that it has licensed spectrum on a shared use basis—with each licensee remaining responsible for its own obligations and holding its own licensed rights—for a variety of services and under a number of different frameworks. For example, during the course of charting out an MSS licensing regime for Big LEO systems, the Commission adopted a plan in which four CDMA systems would each be authorized to operate over 11.35 megahertz of bandwidth in the same 1.6 GHz band, leaving the inter-system coordination to the satellite licensees themselves. Other examples of shared use include certain part 90 Private Land Mobile Radio Services (where the large number of shared users are coordinated through a system of frequency coordinators), many part 95 Personal Radio Services (such as the General Mobile Radio Service, where licensees share the same channels through an informal system of cooperation), and the part 97 Amateur Radio Service (where all frequencies are shared and coordinated by adherence to rules of operation set forth in part 97). The Commission seeks comment on how television broadcast stations can most effectively coordinate their individual rights and responsibilities while operating under the type of sharing arrangement proposed here. Finally, the Commission points out that only where necessary to implement a shared channel licensing scheme will it seek to change the existing policies and rules.

14. The Commission also proposes to limit channel sharing to television stations with existing applications, construction permits or licenses as of the date of adoption of this NPRM. The dual intentions in proposing this channel option are to provide (1) a means for stations that may need to be more economically efficient in their operations to share transmission resources and (2) a path for stations to make their spectrum available for new broadband services and continue to operate a broadcast television service. The Commission requests comment on this proposal.

Basic Qualifications for Channel Sharing

15. Voluntary operation of broadcast stations on shared channels will help to increase the efficient use of the U/V Bands while ensuring that local public interest and service requirements continue to be fulfilled. Since it ultimately seeks an appropriate, market-based balance with flexible use in the U/V Bands, the Commission expects that the extent of channel sharing will vary between markets.

a. Commercial and Noncommercial Educational Stations

16. The Commission seeks comment on whether commercial and noncommercial educational (NCE) stations should be permitted to share a single television channel. NCE television stations operate on special reserved channels and are prohibited from airing commercial material. The Commission contemplates that stations that share a channel will continue to be licensed and operated separately, although they will be sharing a single transmitting facility. Therefore, there would be no overlap of programming between a commercial and NCE station. However, the Commission seeks comment on whether a commercial station should be permitted to operate on a shared channel reserved for NCE use. The Commission seeks to determine how the new "shared" channel might be partitioned or designated to preserve the NCE status while allowing the channel to be shared by a non-NCE entity.

b. Consideration of Service Losses

17. The Commission seeks comment on whether to require that a certain level of television service be preserved in the shared channel environment. Specifically, it seeks comment on whether the Commission should consider any prospective loss of television service when determining whether to permit stations to make the modifications to their transmission facilities necessary to achieve channel sharing. Since stations sharing a single television channel must operate from a single transmission facility, changes to one or more of the stations' existing facilities will be necessary for sharing to occur. Such changes could result in a loss of television service to some persons presently able to receive over-the-air signal from one or more of the stations, and could also result in gains to television service.

18. The Commission notes that its current policy is to consider losses of service on a case-by-case basis, and it seeks comment on continuing that policy in the context of channel sharing arrangements. Although the Commission historically has viewed any loss of service as *prima facie* inconsistent with the public interest, its policy has been to consider and evaluate any counterbalancing factors an applicant may present to justify service losses. This balancing process, to determine whether the projected loss of service will be outweighed by other factors, involves more than a mere comparison of numbers. The Commission examines the extent of the loss, and whether any "white" or "gray" loss areas will be created. The Commission defines "white area" as an area where the population does not receive any over-the-air television service and "gray area" as one where the population receives only one over-the-air television service. The Commission may also examine whether the loss area is "underserved," *i.e.,* where the population receives less than five other existing services. The Commission may also examine whether the loss involves specialized programming such as that from a network.

19. In terms of counterbalancing factors, the Commission has examined whether gain areas will be created including establishment of first television service, second television service, first network service, etc. However, the mere fact that total gains exceed losses does not, standing alone, constitute an affirmative factor offsetting those losses. The Commission may also consider the availability of other television services in the loss area as well as whether the population which would lose service is outside the station's DMA and is predicted to receive the same network programming from a station in their home DMA. The Commission seeks comment on whether to consider these factors in a similar fashion when evaluating losses that result from facility modifications and relocations related to channel sharing.

20. In weighing the public interest benefits that will result from channel sharing, should the Commission consider mitigating circumstances such as the percentage of local cable penetration or satellite use in the loss area? Should sharing stations be allowed to offset otherwise disqualifying service losses by offering to deploy on-channel Digital Transmission Systems (DTS) or other technical measures to restore service to the loss area?

c. Other Issues

21. In addition to the specific areas set forth in this proceeding, the

Commission seeks comment on other areas of interest with respect to channel sharing in conjunction with the recommendations of the Plan. For instance, what is the impact of channel sharing on the media ownership rules? The Commission contemplates that stations that share a channel will continue to be licensed and operated separately, although they will be sharing a single transmitting facility. What are the implications of channel sharing for the local TV ownership rule, the radio/TV cross-ownership rule and the newspaper/broadcast cross-ownership rule?

Preservation of Must Carry Rights

22. Full power television broadcast stations, and certain qualified low-power television broadcast stations, have a right to carriage on cable systems that the Supreme Court has recognized as essential to preserving "the widest possible dissemination of information from diverse and antagonistic sources." Full power broadcasters have similar rights to mandatory carriage on satellite (DBS) systems. The rules proposed in this proceeding are designed to ensure that stations voluntarily electing to share a channel retain their existing rights to mandatory carriage, and the Commission seeks comment on such rules.

23. The Communications Act of 1934, as amended, provides for the mandatory carriage, by cable operators and satellite providers, of certain local broadcast signals. The Act and the Commission's implementing rules establish slightly different thresholds for carriage, depending on whether the station is full power or low-power, or commercial or noncommercial, and also depending on whether carriage is sought on a cable or DBS system. Stations meeting these thresholds are guaranteed carriage of only a single "primary" stream of programming, and carriage for any additional streams must always be negotiated. It is the Commission's intent to adopt a channel sharing framework that will neither increase nor decrease the carriage rights of any broadcaster on any type of system. The Commission anticipates, therefore, that regardless of the number of licensed stations sharing a six-megahertz channel, each would continue to have at least one, but only one, "primary" stream of programming. The Commission seeks comment on specific proposals and in general on the rules necessary to achieve this result.

24. *Cable Carriage.* A full power commercial station is entitled to carriage on a cable system when it is "licensed and operating on a channel regularly assigned to its community by the Commission," and that community is within the same DMA as the cable system. A qualified noncommercial educational station ("NCE"), on the other hand, can be considered "local," and eligible for mandatory carriage on a cable system, in one of two ways. It may either be licensed to a principal community within 50 miles of the system's headend, or the system's headend is within the station's noise limited signal contour (NLSC). Under very narrow circumstances, certain low-power broadcasters can also become "qualified" and eligible for must carry. Among the several requirements for reaching "qualified" status with respect to a particular cable operator, the low-power station must be "located no more than 35 miles from the cable system's headend."

25. *DBS Carriage.* A full power station is entitled to request carriage by a DBS provider any time that provider relies on the statutory copyright license to retransmit the signal of any other "local" full power station (*i.e.,* one located in the same DMA). The standards are the same for both commercial and noncommercial broadcasters, and low-power broadcasters do not have DBS carriage rights.

26. *Carriage of Shared Signals.* The Commission seeks comment on whether the procedures proposed herein would ensure that a television station operating on a shared channel would continue to be:

- "Licensed and operating on a channel regularly assigned to its community by the Commission (for purposes of cable carriage of a commercial station)";
- Licensed to a specific "principal community" or configured with technical facilities that have an NLSC that encompasses the cable system's principal headend (for purposes of cable carriage of a non-commercial station); and
- "Located within" a designated market area (for purposes of DBS carriage of commercial and noncommercial stations).

27. *NCE Issues.* The Commission seeks comment on whether an NCE television station sharing a channel with a commercial television station could affect the NCE station's continued eligibility for carriage. This is particularly relevant in the cable context, because, as discussed, commercial stations and NCEs must meet different criteria in order to be eligible for mandatory carriage. Because the Commission anticipates that sharing stations would continue to be licensed and operated separately, it does not anticipate that an NCE television station would lose its NCE status or eligibility by sharing a channel with a commercial station. The Commission seeks comment on this issue.

28. *Technical Issues.* The Commission also seeks comment on whether a station sharing a channel with one or more other stations, or the redesignation of a given 6 MHz channel as a "shared" channel, would affect the stations' ability to request local carriage on cable and DBS systems serving subscribers within the stations' market. Are there any unique aspects of channel sharing that could prevent a broadcaster, of any type, from achieving the necessary thresholds for mandatory carriage on any cable or DBS system on which it is currently carried? Cable and DBS systems are currently receiving the full 6 MHz signal from broadcasters but only carrying certain streams; would there be any technical differences, from the carrier's perspective, if two or more of these streams on a shared channel were the "primary" streams of different, individually licensed stations? Are there other technical issues that would be unique to a sharing scenario?

29. *Differing Elections.* Even if a commercial station meets the threshold for carriage, it may elect to pursue retransmission consent agreements with one or more MVPDs. When a station has made such an election, it may not be carried by the MVPD without its consent. The Commission seeks comment on how stations' carriage rights would be affected if one sharing station elects retransmission consent and the other elects must carry. The Commission anticipates that each station operating on a shared channel will be licensed and operated as a totally distinct entity with its own "primary" stream of programming, and that the sharing of a channel would not affect a sharing station's carriage election options or rights. The Commission seeks comment on this issue, particularly any technical implications for carrying one stream of a broadcast channel while not carrying another.

30. *Shared signal issues.* There are certain essential issues inherent to sharing a channel that we expect will be resolved by stations sharing a channel. For example, in addition to the threshold requirements discussed earlier, local stations are only eligible for mandatory carriage if they provide a "good quality signal" of at least −61 dBm to the cable or satellite provider. Failure to provide this signal level would therefore affect the carriage rights of all stations using the same channel. The Commission anticipates that stations will make any necessary

changes to their proposed shared transmission facility to ensure continued carriage for sharing stations. The Commission seeks comment on what those changes might be, and, in general, what matters must be resolved by the stations themselves to ensure the success of channel sharing.

31. *New Stations.* Currently, licensees of newly operating stations that are otherwise qualified local stations may seek mandatory carriage of such stations, even outside of the standard election cycle. If the Commission permits new stations, or permittees with unbuilt stations, to operate on shared channels, will any revisions to its rules be in order to ensure that they are eligible to seek mandatory carriage as new stations after they commence broadcasting? The Commission seeks comment on this issue.

32. *Low-power Stations.* The Commission is considering allowing LPTV, Class A, and translator stations to operate on shared channels, both among themselves and with full power stations. If it does permit low-power stations to operate on shared channels, the Commission is also proposing to provide that currently qualified low-power stations retain their eligibility for must carry rights, but to create no new rights. The Commission seeks comment on these proposals. Are there other issues that should be considered with regard to allowing low power stations to channel share?

33. *Other Carriage Issues.* There are a number of other issues that may be relevant to the mandatory carriage of shared signals. For instance, if, as proposed, one stream of each individually licensed station on a single 6 MHz channel will be "primary" for purposes of must carry rights, should sharing broadcasters have any special obligation to identify the "primary" signals at the time they elect carriage? Given the variety of questions that may have some bearing on the development of these rules, the Commission seeks comment on any additional issues pertaining to the mandatory carriage of shared broadcast signals, including those not specifically raised in this NPRM.

Improving Reception of VHF TV Service

34. Recognizing that UHF spectrum is highly desirable for flexible use, the Commission is interested in exploring the steps needed to increase the utility of VHF spectrum for television broadcasts. VHF channels have certain characteristics that have posed challenges for their use in providing digital television service. In particular, the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tends to emit noise in this band that can cause interference, and reception of VHF signals requires physically larger antennas that are generally not well suited to the mobile applications expected under flexible use, relative to UHF channels. The Commission recognizes that television broadcasters have had some difficulty in ensuring consistent reception of VHF signals, and it seeks comment through this NPRM on technical changes to the Commission's rules, broadcast transmission equipment, or television receiver technology that would improve the performance of VHF channels for television broadcasts, including the costs and benefits associated with such changes. The Commission's intent is to treat stakeholders in a fair and equitable manner through procedures established in later actions.

35. *Solutions for VHF Reception Challenges.* It is plain from the channel choices being made by broadcasters that reception issues are posing problems for use of the VHF channels. The Commission is therefore seeking solutions to the VHF digital TV reception difficulties. In this regard, it is considering changes to the DTV operating rules to mitigate or overcome these challenges. The Commission also intends to consider other solutions, including the possibility of indoor antenna performances standards, to make the VHF channels more useful to broadcasters. The Commission also noted that it has seen no indications that there are issues with the performance of television receivers, either traditional models with display screens or stand-alone set-top tuners, in receiving VHF channels.

36. *VHF Band Noise/Power Increases.* One of the problems with indoor VHF reception is noise from nearby (typically in the same room) consumer electronics equipment. While it would be desirable to reduce that noise, the rules limiting spurious emissions from unintentional radiators have been crafted to provide protection of licensed services while allowing production of economically viable devices. Further, any more stringent emissions limits the Commission might impose would not reduce emissions from existing products, nor would such limits reduce noise from incidental emitters (electric motors, switches, etc.), atmospheric disturbances and long range propagation effects that occur in the VHF bands (the latter especially at the low-VHF channels). Thus, at least at this time, the Commission does not believe it would be fruitful to attempt to reduce the permitted level of noise in the VHF bands. The Commission requests comment on whether there are actions it might take to reduce noise levels in the VHF bands used by the television service.

37. The other approach to overcoming noise is to increase the signal-to-noise ratio (S/N ratio) by raising the transmitted power, *i.e.,* effective radiated power (ERP). A number of stations operating on high-VHF channels have already improved their service by increasing their transmitted power. Those stations received special temporary authorizations from the Commission for power increases that exceed the existing maximum power limits. In each of these cases, either the power increase does not cause increased interference to other stations or the station licensee has negotiated with another station to accept some minimum level of new interference. While the Commission is cognizant of the views regarding the limited expectations from power increases expressed at the Broadcast Engineers' Forum, the Commission nonetheless believes that, as demonstrated by the stations that have already increased their transmitted power, such increases can provide some level of improvement in reception of VHF television service. The Commission therefore believes it may be desirable to amend its rules to increase the maximum allowed ERP for VHF stations at least in Zone I, where the current maximum power levels are relatively low. The Commission is specifically proposing to raise the maximum allowed ERP for low-VHF stations in Zones I to 40 kW and for high-VHF stations in Zone I to 120 kW if the station's antenna height above average terrain is 305 meters or less. At antenna heights above 305 meters, the maximum power for both low-VHF and high-VHF stations would be lower in accordance with the table in the proposed rules in Appendix A. This proposal would effectively increase the maximum power for low-VHF and high-VHF stations in Zone I by 6 dB, a level consistent with that indicated as achievable by the VHF Reception Panel. The Commission does not propose to raise the maximum power limits for VHF stations in Zones II and III, as the existing limits still afford those stations the ability to provide stronger signals indoors to consumers who view their signals at locations close to their transmitters. The proposed new maximum power limits for VHF stations would allow such stations to provide signal strengths to areas close to their

transmitters, *i.e.,* generally their principle community areas, that are higher by an amount that would help to compensate for some of the higher noise levels that tend to be present where consumers use indoor antennas.

38. Stations requesting power increases under the proposed new limits would be required to afford protection to other full power television stations from new interference under the existing regime of desired-to-undesired (D/U) signals limits. The Commission believes such an increase would allow many VHF stations experiencing difficulties in reaching viewers indoors to raise their signal levels by a reasonable level to overcome localized noise indoors, consistent with maintaining the approximate range of service provided by the existing maximum power limits. It does, however, recognize that higher power operation would increase the service range of VHF stations by as much at 14 km (9 miles). The Commission stated that is intention is not generally to extend the service range of these stations, as such expansions can to some degree limit the potential for introduction of new stations and changes by other co-channel and first-adjacent channel stations by enlarging the service area that must be protected. Nonetheless, it believes the interests of making the VHF channels more useful to stations and consumers outweigh these concerns about limiting opportunities of other stations. The Commission requests comment on this proposal and suggestions for alternative approaches, including both power limits and protection of service. In this regard, any increases in VHF power under this proposal by existing stations and new stations that are located within 300 kilometers (183 miles) of our border with Canada or within 400 kilometers (248.5 miles) of our border with Mexico will need to be coordinated with the appropriate foreign administration.

39. The Commission also observes that the provisions governing transmission of television signals in §§ 73.682(a)(14) and 73.625(c) of the rules specify that it shall be standard to employ horizontal polarization. The ERP of a television station is therefore considered to be that of its horizontally polarized component. However, § 73.682(a)(14) also provides that circular or elliptical polarization may be employed and that, in such cases, transmission of the horizontal and vertical components in time and space quadrature shall be used. Where such polarizations are used, the ERP of the vertically polarized component may not exceed the ERP of the horizontally polarized component. Stations therefore could achieve an increase in signal levels at indoor locations of perhaps 3 dB by using circular polarization. This step could also be combined with an increase in ERP (horizontal ERP) under the proposal to allow higher VHF maximum power levels. We encourage stations to make use of the option to use increased power under the vertical polarization provisions as a means to improve reception of their signals by indoor viewers.

40. A collateral issue that arises in the context of consideration of increases in the power limits for digital television stations on VHF channels is whether the Commission should also increase the minimum distance requirements for new, post-transition VHF channel allotments with regard to other stations or channel allotments on the same and first-adjacent channels, as specified in §§ 73.616 and 73.623(d) of the rules. Stations on new allotments that operate at the proposed new power limits and are at or close to the current minimum distances with regard to other stations could cause more interference to such stations (and vice versa) than would occur under the current power limits. Increasing those distances would resolve the interference concerns but would also tend to limit opportunities or new stations or for stations desiring to change channels (which necessitates modifying the allotment on which they operate). The Commission generally believes it would be desirable to maintain the current distance standards for new and changed allotments in order to avoid further limiting opportunities for new allotments. The Commission therefore is not proposing to change the minimum distance requirements for new and modified allotments.

41. In taking this approach, the Commission observes that the rules require a station that operates on a new allotment that meets the distance standards to protect other co-channel and adjacent channel stations from new interference in accordance with the desired-to-undesired (D/U) ratio interference protection criteria in § 73.616(e). In describing the services to be protected, this paragraph provides that "[f]or this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the post-transition DTV allotment facilities of the applicant * * *" The rules are not specific, however, as to the post-transition DTV allotment facilities of the applicant, that is, the facilities that a station would be allowed under the allotment without concern for new interference. The Commission proposes to amend § 73.616(e) to clarify that the post-transition DTV allotment facilities are the maximum facilities allowed currently under § 73.622(f). Thus, an applicant for a new station would be allowed to operate up to the current maximum facilities of ERP and antenna height on a new allotment that meets the distance requirements.

42. A station on a new allotment could also operate with facilities that exceed the post-transition allotment facilities if such operation would not cause new interference to other stations as defined under § 73.616(e). In addition, a licensee could apply to operate a station on a new allotment at facilities that exceed the post-transition allotment facilities (up to the proposed new limits) and could possibly cause new interference to another station by taking steps to avoid such interference. Such steps could include use of a directional antenna and/or location of the station's transmitter at a site that is different from the site of the allotment (such sites are generally farther from any stations that would otherwise receive interference). The Commission requests comment on its plan to maintain the existing distance requirements as it increases the maximum allowed power for digital TV stations on VHF channels and on whether it should alternatively increase the minimum distance requirements to match the changes in the power limits. The Commission also asks parties that advocate that it increase the minimum distance requirements to submit suggestions for new minimum distance standards.

43. *Indoor Antennas.* The antenna used to receive signals is a critical element in the television service path. The antenna component of a TV receive system (which consists of an antenna, connecting cable and receiver) should be able to pick up as much of the available signal energy as possible. If an antenna has a very low ability to receive signals or if the level of the desired signal is low, reception may not be possible. In view of the observed poor high-VHF reception capabilities of the majority of the indoor antennas examined in two studies by Meintel, Sgrignoli and Wallace and the FCC Laboratory mentioned in the NPRM and the likelihood that the low-VHF performance of those antennas is even poorer, the Commission intends to consider establishing standards to ensure that indoor antennas are effective for low-VHF channel reception. While the Commission has not regulated these

products previously, it believes that it has authority to set standards to ensure that the performance of indoor antennas is adequate to allow reception of low-VHF channels by TV receive systems under the All Channel Receiver Act, which is codified in section 303(s) of the Communications Act of 1934, as amended. In this regard, section 303(s) specifically provides that the Commission shall "[h]ave authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of *adequately* receiving all frequencies allocated by the Commission to television broadcasting * * *" Because an antenna capable of adequately picking up low-VHF channels is necessary to allow all-channel reception of over-the-air broadcast signals, the Commission believes that the standards proposed would further its section 303(s) mandate. The Commission requests comment on its authority to establish standards for the ability of indoor antennas to receive all of the channels allocated for television service.

44. The Commission request comment, information and suggestions regarding the need for, and desirability of, standards for indoor antennas. The Commission is specifically proposing to require that indoor antennas comply with the industry set standards in ANSI/CEA–2032–A, "Indoor TV Receiving Antenna Performance Standard," February 2009. The ANSI/CEA–2032–A standard defines test and measurement procedures for determining the performance of indoor TV receiving antennas. Section 3.2.2 of this standard provides that to meet the standard, an antenna must have measured gain that exceeds:

- −12 dBd on all CEA test channels 2, 4, and 6 in the VHF low band
- −8 dBd on all CEA test channels 7, 9, 11 and 13 in the VHF high band and
- −8 dBd on all CEA test channels contained in the UHF band (channels 14–[51])

ANSI/CEA–2032–A further specifies that the test procedures in CEA–744–B are to be employed to measure the antenna performance. It also provides standards for active (amplified) antennas, including gain, intermodulation and spurious emission. Further, ANSI/CEA–2032–A provides for labeling antenna packaging and antennas to indicate the channels or bands of channels for which the antenna meets the specified technical requirements. The Commission observes that the high-VHF and UHF performance levels under this industry-developed standard are well within the capabilities of the antennas tested in the MSW and FCC Laboratory studies of indoor antennas. Under this proposal, all indoor television antennas would be required to meet the ANSI/CEA–2032–A standards for reception of low-VHF, high-VHF and UHF signals. In addition, to ensure compliance with these standards indoor antennas would be subject to the Commission's "verification" equipment procedure in part 2 of the rules. This would promote the Commission's objective of improving indoor reception in the VHF bands and well as ensure that indoor antennas are able to adequately receive UHF signals. Antennas that are built-in to, or designed for use with, specific devices such as portable television receivers, dongles, laptop computers, and similar TV reception equipment would not be subject to this requirement. Given the findings of the antenna studies by MSW and its Laboratory staff the Commission believes that the performance levels set forth in ANSI/CEA–2032–A are well within the capabilities of currently available consumer grade television receive antennas.

45. The Commission requests comment on whether the ANSI/CEA–2032–A performance standards are sufficient to ensure adequate reception of digital television signals at most indoor locations and whether the CEA–744–B measurement procedures are appropriate for determining compliance. The Commission also asks whether there might be other standards or measurement methods that might be more appropriate. Its intent is to ensure that consumers are able to achieve indoor reception of digital television signals, and especially of VHF signals, that are comparable to indoor reception of the signals of the former analog television system. The Commission also asks for comment an alternative approach under which it would require only that manufacturers measure indoor antennas using the CEA–744–B test procedure and comply with the labeling requirements of ANSI/CEA–2032–A. Under that approach, antennas would also be subject to the Commission's verification equipment authorization procedure. The Commission invites interested parties to submit comment, information and suggestions for alternative standards regarding all aspects of the indoor antenna issue.

46. *Other Approaches/Solutions for Improving Reception of VHF TV Services.* In addition to power increases for VHF band stations and standards for indoor antennas, the Commission also intends to consider additional options for improving television service in the VHF bands. Interested parties are invited to submit ideas and suggestions for additional measures we could take to improve reception of television signals on VHF channels. The Commission requests that parties submit materials information and analyses describing conditions and phenomenon that contribute to VHF reception difficulties and ideas for overcoming or mitigating them.

Procedural Matters

Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for specified on the first page of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

48. In this *NPRM* the Commission is initiating a process to address America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. Through this *NPRM,* we take preliminary steps to repurpose a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions we expect to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband. This approach is consistent with the National Broadband Plan (the "Plan") [3] recommendation to repurpose 120 megahertz from the broadcast television

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] *See Connecting America: The National Broadband Plan,* Federal Communications Commission, Washington, DC (March 2010); available at *http://www.broadband.gov/plan/.* The *Plan* was developed by the Commission pursuant to the direction of Congress in the American Recovery and Reinvestment Act of 2009 (Recovery Act), *see* American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

bands for new wireless broadband uses through revising (repacking) the channel assignments of TV stations and voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the Commission flexibility in providing additional spectrum resources for meeting the needs of these new applications. At the same time, we recognize that over-the-air TV serves important public interests, and our approach will help preserve this service as a healthy, viable medium. We remain mindful of the informational and entertainment benefits broadcast television provides the public, and our goal is to provide additional options for broadcast licensees.

B. Legal Basis

49. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r),of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

50. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

51. Television Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." [8] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[9] The Commission has estimated the number of licensed commercial television stations to be 1,395.[10] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[11] We therefore estimate that the majority of commercial television broadcasters are small entities.

52. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [12] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

53. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[13] These stations are non-profit, and therefore considered to be small entities.[14]

54. In addition, there are also 2,386 low power television stations (LPTV).[15] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

55. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [16] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[17] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[18] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[19] Thus, the majority of these firms can be considered small.

56. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[20]

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[9] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[10] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[11] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[12] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 21.103(a)(1).

[13] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[14] *See generally* 5 U.S.C. 601(4), (6).

[15] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[16] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[17] 13 CFR 121.201, NAICS code 517110.

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[19] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[20] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[21] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[22] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[23] Thus, under this second size standard, most cable systems are small.

57. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [24] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[25] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[26] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[27] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

58. The specific bands under consideration are the low VHF spectrum at 54–72 MHz (TV channels 2–4) and 76–88 MHz (TV channels 5 and 6), the high VHF spectrum at 174–216 MHz (TV channels 7–13), and the UHF bands at 470–608 MHz (TV channels 14–36) and 614–698 MHz (TV channels 38–51); for purposes of this *NPRM,* we will refer to this spectrum as the "U/V Bands." [28] This *NPRM* proposes three actions that will establish the underlying regulatory framework to facilitate wireless broadband uses of the U/V Bands, without affecting current license assignments in the band. First, we are proposing to add new allocations for fixed and mobile services in the U/V Bands to be co-primary with the existing broadcasting allocation in those bands. The additional allocations would provide the maximum flexibility for planning efforts to increase spectrum available for flexible use, including the possibility of assigning portions of the U/V Bands for new mobile broadband services in the future. Second, we are proposing to establish a framework that permits two or more television stations to share a single six-megahertz channel, thereby enhancing efficient use of the U/V Bands. Third, we intend to consider approaches to create value for television viewers and broadcasters by increasing the utility of the VHF bands for the operation of television services.

59. By establishing the underlying regulatory framework to facilitate wireless broadband uses in the U/V Bands, this *NPRM* is the first in a series of actions that will allow us to make progress toward our goal of improving efficient use of the bands and enable ongoing innovation and investment through flexible use. We will propose further actions consistent with other of the *Plan's* recommendations for the U/V Bands, including, but not limited to, the process of voluntarily returning broadcast licenses to the Commission and the licensing process and service rules for new fixed and mobile wireless communications services.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[29]

61. We do not propose in this *NPRM* to specify a band plan for the spectrum to be recovered, we do, however, request comment on how we should re-configure the current U/V Bands to ensure that the services involved, *i.e.,* broadcast television as well as new fixed and mobile services, can best be supported. Recognizing that UHF spectrum is useful for mobile services, one approach would be to select the spectrum to be recovered from the upper portion of the UHF band and designate it for use by the wireless communications service (WCS). This would effectively extend the current allocation plan and WCS spectrum in the adjacent WCS bands at 700 MHz (WCS 700 MHz bands) to include new lower adjacent frequencies. Alternatively, it might be technically desirable to configure the bands to provide paired spectrum in separate bands for broadband applications, or to designate a portion of the spectrum for unpaired uses or different wireless services. For example, current rules in the U/V Band allow for unlicensed use of unassigned channels ("white spaces"), and the *Plan* recommended the creation of a nationwide contiguous band for unlicensed use. We also request comment on whether a new U/V Band plan should incorporate an unlicensed block of spectrum, or if other bands would be better suited to this purpose.

62. We seek comment on other areas of interest with respect to channel sharing in conjunction with the recommendations of the National Plan. We welcome comments from stations that anticipate that they may participate in channel sharing as well as from other interested parties.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

63. None.

[21] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[22] 47 CFR 76.901(c).

[23] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[24] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[25] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[26] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[27] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[28] The band 608–614 MHz, *i.e.,* TV channel 37, is used for radio astronomy and is not part of the spectrum being considered for reallocation. *See* 47 CFR 2.106., US 74 and US 246.

[29] *See* 5 U.S.C. 603(c).

Ordering Clauses

64. Pursuant to sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C.154(i), 301, 302, 303(e), 303(f) and 303(r), this *Notice of Proposed Rule Making is adopted.*

65. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2, 15 and 73

Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 15, and 73 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Pages 19, 20, 24, and 28 are revised.

b. In the list of Non-Federal Government (NG) Footnotes, footnotes NG66 and NG149 are removed.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations	47-137 MHz (VHF)				Page 19
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
47-68 BROADCASTING	47-50 FIXED MOBILE	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
	50-54 AMATEUR 5.162A 5.166 5.167 5.167A 5.168 5.170		50-73	50-54 AMATEUR	Amateur Radio (97)
5.162A 5.163 5.164 5.165 5.169 5.171	54-68 BROADCASTING Fixed Mobile 5.172	54-68 FIXED MOBILE BROADCASTING 5.162A		54-72 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
68-74.8 FIXED MOBILE except aeronautical Mobile	68-72 BROADCASTING Fixed Mobile 5.173	68-74.8 FIXED MOBILE			
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74 US246		
	74.6-74.8 FIXED MOBILE		74.6-74.8 FIXED MOBILE		Private Land Mobile (90)
5.149 5.175 5.177 5.179		5.149 5.176 5.179	US273		
74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	5.182 5.183 5.188 87-100 FIXED MOBILE BROADCASTING		76-88 FIXED MOBILE BROADCASTING	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
5.175 5.179 5.187 87.5-100 BROADCASTING 5.190	5.185 88-100 BROADCASTING			NG5 NG14 NG115	
			88-108	88-108 BROADCASTING NG2	Broadcast Radio (FM)(73) FM Translator/Booster (74L)
100-108 BROADCASTING 5.192 5.194			US93	US93 NG5	
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.200 US26 US28 US403		
			121.9375-123.0875 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.200 US32 US33 US112		
			123.5875-128.8125 AERONAUTICAL MOBILE (R) US26 US403		
			128.8125-132.0125	128.8125-132.0125 AERONAUTICAL MOBILE (R)	
			132.0125-136 AERONAUTICAL MOBILE (R) US26		
			136-137 US244	136-137 AERONAUTICAL MOBILE (R) US244	
5.111 5.200 5.201 5.202					

174-223 BROADCASTING 5.235 5.237 5.243	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING 5.233 5.238 5.240 5.245	174-216	174-216 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-217 Fixed Land mobile US210 US241 G2	216-219 FIXED MOBILE except aeronautical mobile US210 US241 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95)
			217-220 Fixed Mobile US210 US241	219-220 FIXED MOBILE except aeronautical mobile Amateur NG152 US210 US241 NG173	Maritime (80) Private Land Mobile (90) Amateur Radio (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE US241 US242		Private Land Mobile (90)
223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247		223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	222-225	222-225 AMATEUR	Amateur Radio (97)
	225-235 FIXED MOBILE		225-235 FIXED MOBILE	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250	G27		
235-267 FIXED MOBILE 5.111 5.252 5.254 5.256 5.256A			235-267 FIXED MOBILE 5.111 5.256 G27 G100	235-267 5.111 5.256	Page 24

456-459 FIXED MOBILE 5.286AA 5.271 5.287 5.288			456-459 5.287 5.288	456-460 FIXED LAND MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 5.287 5.288 NG12 NG112 NG124 NG148		
460-470 FIXED MOBILE 5.286AA Meteorological-satellite (space-to-Earth)			460-470 Meteorological-satellite (space-to-Earth)	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 US73 US201 US209 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE	Maritime (80) Private Land Mobile (90)
5.287 5.288 5.289 5.290			5.287 5.288 5.289 US73 US201 US209	5.288 5.289 US73 US201 NG124	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-608 FIXED MOBILE BROADCASTING	Public Mobile (22) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H) Private Land Mobile (90)
	512-608 BROADCASTING	585-610 FIXED MOBILE			
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	608-614 BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307	608-614 LAND MOBILE (medical telemetry and medical telecommand) RADIO ASTRONOMY US74 US246		Personal Radio (95)
	614-698 BROADCASTING Fixed Mobile 5.293 5.309 5.311A	610-890 FIXED MOBILE 5.313A 5.317A BROADCASTING 5.149 5.305 5.306 5.307 5.311A 5.320	614-698	614-698 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311A 5.312					

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PART 15—RADIO FREQUENCY DEVICES

3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

4. Section 15.38 is amended by adding paragraphs (b)(14) and (b)(15) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(14) ANSI/CEA–2032–A: "Indoor TV Receiving Antenna Performance Standard," May 2005, IBR approved for § 15.117(l).

(15) ANSI/CEA–744–B: "TV Receiving Antenna Performance Presentation and Measurement," February 2009, IBR approved for § 15.117(l).

* * * * *

5. Section 15.117 is amended by adding paragraph (l) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(l) *Indoor Antennas.* Effective [12 MONTHS AFTER ADOPTION OF THE FINAL ORDER IN THIS PROCEEDING], antennas intended for indoor reception of television broadcast service shall comply with the standards set forth in ANSI/CEA–2032–A: "Indoor TV Receiving Antenna Performance Standard," May 2005, (incorporation by reference, *see* § 15.38(c)), including the requirement for measurements in accordance with the procedures set forth in ANSI/CEA–744–B: "TV Receiving Antenna Performance Presentation and Measurement," February 2009, (incorporated by reference, *see* § 15.38(c). Antennas that are built-in to, or designed for use with specific devices, such as portable television receivers, dongles, laptop computers, and similar TV reception equipment are not be subject to this requirement.

PART 73—RADIO BROADCAST SERVICES

6. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

7. Section 73.616 is amended by adding paragraph (e)(3) to read as follows:

§ 73.616 Post-transition DTV station interference protection.

* * * * *

(e) * * *

(3) The facilities of a post-transition DTV allotment are as follows:

(i) (A) For a station that operates on a channel 2–6 allotment, the allotment ERP is 40 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or 45 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. For a station located in Zone I that operates on channels 2–6 with HAAT that exceeds 305 meters, the allotment ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 92.57 - 33.24*\log_{10}(HAAT)$

(B) For a station located in Zone II or Zone III that operates on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allotment ERP level is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(C) For a DTV station located in Zone II or Zone III that operates on channels 2–6 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 57.57 - 17.08*\log_{10}(HAAT)$

(ii)(A) For a station that operates on a channel 7–13 allotment, the allotment ERP is 120 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or 160 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. For a station located in Zone I that operates on channels 7–13 with HAAT that exceeds 305 meters, the allotment ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 97.35 - 33.24*\log_{10}(HAAT)$

(B) For a station located in Zone II or Zone III that operates on channels 7–13 with an antenna HAAT above 305 meters, the allotment ERP level is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(C) For a station located in Zone II or Zone III that operates on channels 7–13 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 62.34 - 17.08*\log_{10}(HAAT)$

(iii)(A) For a station that operates on a channel 14–51 allotment, the allotment ERP is 1000 kW if its antenna HAAT is at or below 365 meters. At higher antenna HAAT levels, the allotment ERP level for such a station is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–51, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31

(B) For a station located in Zone I, II or III that operates on channels 14–51 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 72.57 - 17.08*\log_{10}(HAAT)$

* * * * *

8. Section 73.622 is amended by revising paragraphs (f)(6) and (f)(7) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(f) * * *

(6) A DTV station that operates on a channel 2–6 allotment will be allowed a maximum ERP of 40 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 45 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 2–6 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 98.57 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(iii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 57.57 - 17.08*\log_{10}(HAAT)$

(7) A DTV station that operates on a channel 7–13 allotment will be allowed a maximum ERP of 120 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 160 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 7–13 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 7–13 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 103.35 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT above 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(iii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 62.34 - 17.08*\log_{10}(HAAT)$

* * * * *

[FR Doc. 2011–2102 Filed 1–31–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require certain motor carriers operating commercial motor vehicles (CMVs) in interstate commerce to use electronic on-board recorders (EOBRs) to document their drivers' hours of service (HOS). Under this proposal, all motor carriers currently required to maintain Records of Duty Status (RODS) for HOS recordkeeping would be required to use EOBRs to systematically and effectively monitor their drivers' compliance with HOS requirements. Additionally, this proposal sets forth the supporting documents that all motor carriers currently required to use RODS would still be required to obtain and keep, as required by section 113(a) of the Hazardous Materials Transportation Authorization Act (HMTAA). It explains, however, that although motor carriers subject to the proposed EOBR requirements would still need to retain some supporting documents, they would be relieved of the requirements to retain supporting documents to verify driving time. FMCSA also proposes to require all motor carriers—both RODS and timecard users—to systematically monitor their drivers' compliance with HOS requirements. Motor carriers would be given 3 years after the effective date of the final rule to comply with these requirements.

DATES: Comments must be received on or before April 4, 2011. Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before April 4, 2011.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–

2010–0167 using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs (OIRA), OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Collection of Information Comments
E. Pilot Project on Open Government and the Rulemaking Process
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B. Authority: Supporting Documents
IV. Background
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3. Information in Supporting Documents (49 CFR 395.11(e)(1))
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6. Retention and Maintenance of Supporting Documents (49 CFR 395.8(k)(1))
7. Motor Carrier Self-Compliance Systems
VI. Rulemaking Analyses

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2010–0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2010–0167" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2010–0167" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOTs complete Privacy Act Statement in the **Federal Register** notice published on April 11, 2000 (65 FR 19476).

D. Collection of Information Comments

If you have comments on the collection of information discussed in this notice of proposed rulemaking (NPRM), you must also send those comments to the OIRA, OMB. To ensure that your comments are received on time, the preferred methods of submission are by e-mail to *oira_submissions@omb.eop.gov* (include docket number "FMCSA–2010–0167" and "Attention: Desk Officer for FMCSA, DOT" in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, FMCSA, DOT.

E. Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a Memorandum on Transparency and Open Government in which he described how: "Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

To support the President's open government initiative, DOT has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes

may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org,* to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. In this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the Federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice.

For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at (202) 366–9314 or at *brett.jortland@dot.gov.*

II. Abbreviations and Acronyms

Advanced Notice of Proposed Rulemaking—ANPRM
American National Standards Institute—ANSI
American Standard Code for Information Interchange—ASCII
American Trucking Associations—ATA
Automatic On-Board Recording Devices—AOBRD
Behavior Analysis Safety Improvement Categories—BASICs
Clean Air Act—CAA
Code of Federal Regulations—CFR
Commercial Driver's License—CDL
Commercial Motor Vehicle—CMV
Comprehensive Safety Analysis—CSA
Department of Labor—DOL
Department of Transportation—DOT
Electronic On-Board Recorder—EOBR
Environmental Assessment—EA
Federal Highway Administration—FHWA
Federal Motor Carrier Safety Administration—FMCSA
Federal Motor Carrier Safety Regulations—FMCSRs
Federal Register—FR
Fleet Management System—FMS
Global Positioning System—GPS
Hazardous Materials—HM
Hazardous Materials Transportation Authorization Act of 1994—HMTAA
Hours-of-Service—HOS
Interstate Commerce Commission—ICC
Interstate Commerce Commission Termination Act of 1995—ICCTA
Intelligent Vehicle Highway System Act—IVHSA
Long-Haul—LH
Motor Carrier Management Information System—MCMIS
Motor Carrier Safety Assistance Program—MCSAP
National Environmental Policy Act of 1969—NEPA
National Transportation Safety Board—NTSB
North American Industrial Classification System—NAICS
Notice of Proposed Rulemaking—NPRM
Office of Information and Regulatory Affairs—OIRA
Office of Management and Budget—OMB
On-duty-not-driving—ODND
Personal Identification Number—PIN
Personally Identifiable Information—PII
Power Unit—PU
Privacy Impact Assessment—PIA
Record of Duty Status—RODS
Regulatory Impact Analysis—RIA
Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users—SAFETEA–LU
Safety Management System—SMS
Short-Haul—SH
Small Business Administration—SBA
Supplemental Notice of Proposed Rulemaking—SNPRM
Transportation Equity Act for the 21st Century—TEA–21
United States Code—U.S.C.
Value of a Statistical Life—VSL

III. Legal Basis for the Rulemaking

This NPRM would improve CMV safety and reduce paperwork burden by increasing the use of EOBRs within the motor carrier industry, which will improve HOS compliance. The approach has three components: (1) Requiring EOBRs to be used by considerably more motor carriers and drivers than those covered by the Agency's April 5, 2010 final rule that addressed the remedial use of EOBRs for motor carriers with significant HOS violations (2) requiring motor carriers to develop and maintain systematic HOS oversight of their drivers, and (3) simplifying the supporting documents requirements so motor carriers can make the best use of EOBRs and their support systems as their primary means of recording HOS information and ensuring HOS compliance.

A. Authority: EOBR

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935, now codified at 49 U.S.C. 31502(b)) (the 1935 Act) provides that "[t]he Secretary of Transportation may prescribe requirements for—(1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation." This NPRM addresses "safety of operation and equipment" of motor carriers and "standards of equipment" of motor private carriers and, as such, is well within the authority of the 1935 Act.

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984, now codified at 49 U.S.C. 31136) (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to:

> Prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" (49 U.S.C. 31133(a)(8) and (10)).

The HOS regulations are designed to ensure that driving time—one of the principal "responsibilities imposed on the operators of commercial motor vehicles"—does "not impair drivers' ability to operate the vehicles safely" (49 U.S.C. 31136(a)(2)). EOBRs that are properly designed, used, and maintained would not only permit motor carriers to schedule vehicle and driver operations more efficiently, but would also enable motor carriers to more effectively and accurately track their drivers' on-duty driving hours, thus preventing HOS violations and resulting crashes. Requirements that motor carriers retain certain other supporting documents, in addition to EOBR records, further assist the Agency in ensuring driver and motor carrier compliance with the HOS rules. Driver compliance with the HOS rules, in turn, helps ensure that "the physical condition of [commercial motor vehicle drivers] is adequate to enable them to operate the vehicles safely" (49 U.S.C. 31136(a)(3)). Indeed, the Agency considered whether this proposal would impact driver health under 49 U.S.C. 31136(a)(3) and (a)(4). Because the proposal could increase compliance with the HOS regulations, including driving and off-duty time requirements, it would actually have a positive effect on the physical condition of drivers. (*See* the discussion of health impacts at Section VI of this NPRM regarding environmental analyses.)

The requirements in 49 U.S.C. 31136(a)(1) concerning safe motor vehicle maintenance, equipment, and loading are not germane to this proposed rule because EOBRs and supporting documents influence driver operational safety rather than vehicular and mechanical safety. Consequently, the Agency has not assessed the proposed rule against that requirement. However, to the limited extent 49 U.S.C. 31136(a)(1) pertains specifically to driver safety, the Agency has taken this statutory requirement into account throughout the proposal.

Section 9104 of the Truck and Bus Safety and Regulatory Reform Act (Pub. L. 100–690, November 18, 1988, 102 Stat. 4181, at 4529) also anticipates the Secretary promulgating "a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations" and requires the Agency to ensure that any such device is not used to "harass vehicle operators" (49 U.S.C. 31137(a)).

Based on the statutory framework reviewed previously, FMCSA has the authority to adopt an industry-wide requirement that all motor carriers subject to HOS requirements under 49 CFR part 395 install and use EOBR-based systems.

B. Authority: Supporting Documents

Section 113(a) of the HMTAA requires the Secretary to prescribe regulations to improve—(A) compliance by CMV drivers and motor carriers with HOS requirements; and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance. The cost of such regulations must be reasonable to drivers and motor carriers (section 113(a)(2)).

HMTAA section 113(b) describes what elements must be covered in the new regulations. HMTAA section 113(b)(1) states that the regulations must allow for a "written or electronic document * * * to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status [RODS]." The legislative history emphasizes that requiring the retention of supporting documents would allow enforcement personnel to support or disprove allegations of HOS violations, including preventing firms from playing "hide and seek" or discarding supporting documents (S. 1640, 140 Cong. Rec. S11320, S11323, 1994 WL 422479, August 11, 1994). Section 113(b)(1) further directs the Secretary to include in the regulations a description of identification items (that include either driver name or vehicle number) that would facilitate matching these supporting documents with RODS.

Section 113(b)(2) states that the regulations shall specify the "number, type, and frequency of supporting documents that must be retained by the carrier."

Section 113(b)(3) requires that the regulations specify that supporting documents shall be retained by the motor carrier for at least 6 months from the date of a document's receipt.

Section 113(b)(4) calls for the Agency to draft regulations "* * * to authorize, on a case-by-case basis, self compliance systems * * *" for motor carriers, including "a group" of motor carriers.

Under section 113(b)(5), the Agency shall include a provision in its regulations that allows the Agency to issue waivers from certain requirements under 49 CFR 395.8(k) when sufficient supporting documentation is provided to enforcement personnel through an intelligent-vehicle highway system, as defined by section 6059 of the Intelligent Vehicle Highway Systems Act (IVHSA) (Pub. L. 102–240, December 18, 1991, 105 Stat. 2189, 2195). The Federal Highway Administration (FHWA), the predecessor organization to FMCSA within the Department of Transportation (DOT), did not draft the regulations authorized under section 113(b)(5). The IVHSA was subsequently repealed (*see* section 5213 of TEA–21, 112 Stat. 463); there currently is no statutory guidance on waivers as the term was used in section 113(b)(5). However, this provision does not affect this rulemaking because other regulatory avenues exist for motor carriers to apply for waivers, exemptions, and pilot programs.

Section 113(c) defines a supporting document as "any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status." Consequently, this NPRM does not propose to require generation of new documents *outside* the normal course of the carrier's business.

IV. Background

A. On-Board Recording Devices—History of HOS Records of Duty Status (RODS) Regulations [1]

Current Federal HOS regulations (49 CFR part 395) limit the number of hours a CMV driver may drive. The regulations also limit, during each 7- or 8-day period, the maximum on-duty time before driving is prohibited (exceptions are listed in 49 CFR 395.1(k), (n), and (o)). Such rules are needed to prevent CMV operators from driving for long periods without opportunities to obtain adequate sleep. Sufficient sleep is necessary to ensure that a driver is alert behind the wheel and able to respond appropriately to changes in the driving environment.

With certain exceptions,[2] motor carriers and drivers are required by 49 CFR 395.8 to keep RODS to track

[1] For a more complete regulatory history of EOBRs, please refer to the preambles of the 2004 EOBR ANPRM and 2007 EOBR NPRM (Docket: FMCSA–2004–18940).

[2] These exceptions are listed in 49 CFR 395.1.

driving, on-duty, and off-duty time. FMCSA and State agencies use these records to ensure compliance with the HOS rules.

On April 5, 2010, the Agency issued a final rule that addressed the limited, remedial use of EOBRs for motor carriers with significant HOS violations (75 FR 17208). That final rule required a motor carrier that was found during a compliance review to have a 10 percent violation rate for any HOS regulation in Appendix C of 49 CFR part 385 to install and use EOBRs on all of that carrier's CMVs. The compliance or implementation date for the rule is June 4, 2012. Although FMCSA received comments recommending expanding the reach of the rule beyond the number of motor carriers the 2010 remedial directive is estimated to affect, the limited scope of the NPRM prevented the Agency from doing so. As noted in the preamble to the 2010 final rule, however, FMCSA recognizes that the potential safety risks associated with HOS violations are such that mandatory EOBR use for a broader population might be appropriate. Accordingly, this proposed rule would expand the scope of mandatory EOBR use beyond the population of motor carriers that are or would be subject to a remedial directive as a result of the April 2010 final rule.

This NPRM honors the Agency's commitment to safety by taking action to improve compliance with the HOS rules. It responds to issues that would have been addressed in the April 2010 final rule were it not for the limited scope of the NPRM. As FMCSA noted in its April 2010 final rule:

> Numerous commenters to the NPRM [January 18, 2007 (72 FR 2340)] stated that the proposal still would not require EOBR use by enough carriers to make a meaningful difference in highway safety, relative to the total carrier population. The FMCSA acknowledges the safety concerns of the commenters. In response to those concerns, the Agency will explore the safety benefits of a broader EOBR mandate in a new rulemaking proceeding that will begin in the near future.

B. Supporting Documents Requirements

1. History of Supporting Documents Requirement

A fundamental principle of the FMCSRs, stated in 49 CFR 390.11, is that a motor carrier has the duty to require its drivers to comply with the FMCSRs, including HOS-related duties and prohibitions. Motor carriers have historically required their drivers, as a condition of employment, to provide supporting documents, such as fuel receipts, toll receipts, bills of lading, and repair invoices. They compare these documents to the drivers' entries on the RODS (or the record provided by the automatic on-board recording device (AOBRD) or EOBR, if such a device is used) to help verify the accuracy of the HOS reported by their CMV drivers. The FMCSRs require motor carriers to retain these supporting documents, as well as the paper and electronic RODS, for a period of 6 months from the date of receipt.

Although the FMCSRs have always required a "remarks" section to augment the duty status information contained in the RODS document, it was not until January 1983 that the use of supporting documents was explicitly required. The final rule revising the recordkeeping requirements for 49 CFR part 395 to explicitly require supporting documents was published November 26, 1982 (47 FR 53383); but the rule did not define the term "supporting documents," and questions arose concerning what the Agency expected motor carriers to retain.

On November 17, 1993 the Agency published regulatory guidance (Regulatory Guidance for the Federal Motor Carriers Safety Regulations (58 FR 60734)) on a variety of topics, including supporting documents. Supporting documents were the subject of Question 10 for 49 CFR 395.8 which provides in pertinent part:

> *Question 10:* What regulation, interpretation, and/or administrative ruling requires a motor carrier to retain supporting documents and what are those documents?
>
> *Guidance:* Section 395.8(k)(1) requires motor carriers to retain all supporting documents at their principal places of business for a period of 6 months from date of receipt.
>
> Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor carrier to verify the information recorded on the driver's record of duty status.
>
> Examples are: Bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, CVSA reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business.

The following year, in HMTAA section 113, Congress directed the Agency to prescribe regulations to amend 49 CFR part 395 to improve driver and motor carrier compliance with the HOS regulations. (*See* the Legal Basis section of this NPRM.) Section 113 also defined supporting documents in a manner nearly identical to the Agency's regulatory guidance: "For purposes of this section, a supporting document is any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status" (HMTAA sec. 113(b)(1)).

In its revised regulatory guidance, published on April 4, 1997 (*Regulatory Guidance for the Federal Motor Carrier Safety Regulations* (62 FR 16370)), the Agency emphasized the need for motor carriers to provide adequate HOS oversight. Specifically, the Agency added two Q&A guidance items to 49 CFR 395.3:

> *Question 7:* What is the liability of a motor carrier for hours of service violations?
>
> *Guidance:* The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the FMCSRs does not depend upon actual knowledge of the violations.
>
> *Question 8:* Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?
>
> *Guidance:* Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers "permit" violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations (65 FR 16370, 16424).

A year later, on April 20, 1998, the Agency published an NPRM in which it proposed to define "supporting documents" identically to the HMTAA definition (63 FR 19457). It also proposed requiring motor carriers to develop and use an HOS supporting document auditing system that would include a procedural manual. The manual would identify the types of documents used, specify how the audit system would work, how drivers recording inaccurate information on their RODS would be notified, and how a carrier would take corrective action to improve drivers' compliance. If a motor carrier did not have a supporting document auditing system, it would have to maintain various types of business documents and require its drivers to collect and submit those

documents in order to support the accuracy of the drivers' RODS. Finally, the NPRM proposed to allow use of "automated, electronic, or laser technology" systems to maintain copies of records or documents, including those requiring a signature, so long as the motor carrier was able to provide alternate means for signature verification.

Many commenters to the 1998 NPRM expressed concern that the Agency was considering addressing HOS supporting documents separately from the HOS advance notice of proposed published on November 5, 1996 (61 FR 57252). FMCSA responded by including proposed changes to the methods of verifying HOS compliance through supporting documents in its May 2, 2000, NPRM on HOS regulations (65 FR 25540). The supporting documents section of that NPRM focused upon operations involving long or regional trips away from a home base with little supervision of, contact with, or control over the driver. The Agency proposed that the paperwork burdens for all other operations be minimized and stated that, whenever possible, FMCSA would be prepared to accept records that are required by other Federal agencies. Notably, the Department of Labor's (DOLs) Wage and Hour Division regulations require motor carrier employers to maintain time records for 2 years (29 CFR part 516). The Agency believed this approach would meet the requirements of section 113 of the HMTAA and be consistent with the dual objectives of (1) improving the enforcement of the HOS regulations and (2) simplifying the recordkeeping requirements of motor carriers.

The April 2003 HOS final rule did not implement the HMTAA provision for supporting documents as proposed. One of the reasons was that the Agency decided to not move forward with its May 2000 proposal for five motor carrier operational categories (long-haul (LH), regional, and three types of local operations), with significantly different recordkeeping requirements for the local and for the regional and LH carriers. However, the final rule did state (at 68 FR 22490):

> A motor carrier's responsibility for compliance with the HOS regulations remains clear. The motor carrier is responsible for and must police the actions of its employees. This obligation under the FMCSRs was affirmed by the Associate Administrator for what was then the Office of Motor Carriers (of the FHWA). *In the Matter of Horizon Transportation, Inc.,* 55 FR 43292 (October 26, 1990) (Final Order February 12, 1990). A motor carrier's responsibility for the actions of independent contractors and owner operators it uses was outlined in the matter of *In re R.W. Bozel Transfers, Inc,* 58 FR 16918 (March 31, 1993) (Final Order August 6, 1992); and more recently *In the Matter of Commodity Carriers, Inc.,* (Order Appointing Administrative Law Judge March 25, 1997). Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at the issue of this Final Rule—driver fatigue [*see In re National Retail Transportation, Inc.* (Final Order: Decision on Review September 12, 1996)]. The United States Court of Appeals for the Sixth Circuit affirmed in *A.D. Transport Express Inc.* v. *Federal Motor Carrier Safety Administration,* 290 F. 3d 761 (6th Cir. 2002), that supporting documents must be maintained in a common sense manner so that FMCSA investigators can "verify dates, times, and locations of drivers recorded on the RODS." More recently, the DC Circuit agreed that the term "supporting documents" in the current rule encompasses any document that could be used to support the RODS. That decision also found an FMCSA requirement that supporting documents must be maintained in a fashion that permits the matching of those records to the original drivers' RODS as a reasonable interpretation of 49 CFR 395.8(k)(1). In fact, the Court concluded that all the FMCSA is asking is that carriers refrain from destroying the agency's ability to match records with their associated drivers (*Darrell Andrews Trucking* v. *Federal Motor Carrier Safety Administration,* 296 F. 3d 1120 (DC Cir. 2002)).

FMCSA published a supplemental NPRM (SNPRM) on supporting documents on November 3, 2004 (69 FR 63997). The SNPRM proposed that motor carriers must review and verify the HOS records of both employee drivers and independent owner-operators proposed to require that drivers submit to the motor carrier all supporting documents along with the RODS; and specified that motor carriers must maintain supporting documents in a method that allows cross reference to the RODS. The SNPRM also proposed a self-monitoring system for supporting documents that would be a carrier's primary method for ensuring compliance with the HOS regulations: An FMCSA Special Agent or other authorized government safety official could deem a system to be effective if fewer than 10 percent of the drivers' paper RODS or AOBRD records were found to be false. Finally, the SNPRM also proposed to permit the use of electronic documents as a supplement to, and, in certain circumstances, in lieu of, paper supporting documents.

Commenters on the SNPRM raised concerns with the number and quality of supporting documents drivers and carriers were expected to obtain and retain; the lack of specificity of the self-monitoring system; the potential burdens for motor carriers to verify, inspect, and maintain these documents and link them to RODS; and the availability of sufficient FMCSA resources to enforce the regulation and to assess applications for exemptions. In addition, the Agency discovered a longstanding error in the computation of the information collection burden associated with the HOS regulations. This error had caused the Agency to significantly underestimate the information collection burden attributable to the SNPRM. FMCSA withdrew the SNPRM on October 25, 2007 (72 FR 60614).

The use of advanced technologies in the supporting documents context was the subject of FMCSA and predecessor agency enforcement policy. In August 1997, an enforcement policy memorandum limited the use of advanced technology, mainly global positioning system (GPS) records, during investigations regarding motor carrier compliance with FMCSRs. At the time the memorandum was issued, the Agency stated that it recognized that the technologies, which were emerging and being implemented within the industry in 1997, offered a positive opportunity to advance operational safety performance. At the same time, the time-and-location information the new technologies provided was noted to be considerably more precise than location information handwritten in a paper RODS and could tip the playing field to the disadvantage of carriers that had adopted those technologies. In order to promote and encourage motor carriers to use these new technologies in their operations and safety management systems, the Agency decided to limit its use of technology data and electronically produced records during reviews and for regulatory enforcement purposes.

In the years since the Agency established that policy, the use of advanced vehicle location tracking technologies has become widely accepted and an integral component of motor carriers' logistics, fleet operations, and safety management systems. Reasoning that the 1997 policy had achieved its purpose, FMCSA rescinded the policy on November 19, 2008 (73 FR 69717). On a related matter, the Agency formally re-initiated work on the Supporting Documents Rulemaking in July 2009.

On January 15, 2010, the American Trucking Associations (ATA) filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the District of Columbia Circuit (DC Cir. No. 10–1009). ATA petitioned the court to direct FMCSA to issue an NPRM on

"supporting documents" in conformance with the requirements set forth in section 113 of the HMTAA within 60 days after the issuance of the writ and a final rule no later than 6 months after the issuance of the NPRM. The court granted the petition for writ of mandamus on September 30, 2010, ordering FMCSA to issue an NPRM on the supporting document regulations by December 30, 2010. A copy of the Petition for Writ has been placed in the docket for this NPRM. Partially in response to petitioner's court filing, FMCSA issued interim guidance on HOS supporting documents and mobile communications/tracking policy on June 10, 2010 (75 FR 32984). In addition to removing certain documents from the list of supporting documents a carrier must maintain, that guidance confirmed that carriers are liable for the actions of their employees if they have the means by which to detect HOS violations. The guidance made it clear that the 1997 enforcement policy memorandum had been made less relevant by the widespread use of vehicle location tracking technologies. Today's proposed rule would supersede, in most respects, that interim guidance.

2. Treatment of Supporting Documents in the April 5, 2010, EOBR Final Rule

The April 2010 final rule sets forth new performance standards for devices and systems used to produce electronic HOS records. It also mandates the use of these devices by motor carriers that have demonstrated serious noncompliance with the HOS regulations. In addition, the rule provides incentives to encourage motor carriers to use EOBRs on a voluntary basis by providing relief from the requirement that such motor carriers maintain supporting documents to verify driving time. Because the Agency agrees with numerous commenters that EOBRs with GPS or similar location data produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities, motor carriers voluntarily maintaining the time and location data produced by EOBRs would need to maintain only those additional supporting documents that are necessary to verify on-duty not driving (ODND) activities and off-duty status (75 FR 17208, at 17212, 17233, and 17234).

V. Agency Proposal

This NPRM would improve CMV safety and reduce paperwork burdens by increasing the use of EOBRs within the motor carrier industry, which will improve HOS compliance. The approach has three components: (1) Requiring EOBRs to be used by considerably more motor carriers and drivers than the April 2010 final rule, (2) requiring motor carriers to develop and maintain systematic HOS oversight of their drivers, and (3) simplifying the supporting documents requirements so motor carriers can make the best use of EOBRs and their support systems as their primary means of recording HOS information and ensuring HOS compliance. FMCSA believes this approach strikes an appropriate balance between promoting highway safety and minimizing cost and operational burdens on motor carriers in certain operations that have inherently less crash risk.

A. Requirement for Mandatory EOBR Use (49 CFR 395.8)

FMCSA proposes mandatory installation and use of EOBRs in all CMVs for which the use of RODS is currently required. CMVs operating in interstate commerce using accurate and true time records to record drivers' HOS under the provisions of 49 CFR 395.1(e)(1) and (2) may continue to use these records. While they are not required to install and use EOBRs, nothing in this proposed rule precludes them from doing so.

A key factor that allowed the Agency to consider proposing a broader EOBR mandate was the rise in the estimate of the Economic Value of a Statistical Life (VSL). As FMCSA discussed in the April 2010 EOBR final rule, DOT issued a memorandum on February 5, 2008, instructing its modal agencies to estimate the economic value of preventing a human fatality at $6 million. *See* "Treatment of the Economic Value of a Statistical Life in Departmental Analyses" (available at: *http://ostpxweb.dot.gov/policy/reports/080205.htm*). FMCSA also published a notice in the **Federal Register** describing this policy change (73 FR 35194, June 20, 2008). The previous VSL, which was used in the Regulatory Impact Analysis (RIA) for the EOBR NPRM (Docket: FMCSA–2004–18940), was $3.0 million. Given that the VSL doubled, the net benefits of the April 5, 2010, rule, as well as those of other FMCSA rules under development, were recalculated using the new figures. This recalculation resulted in a reappraisal of the regulatory options by the Agency. Moreover, a broader mandate is more cost effective because of the widespread availability and functionality of on-board communications and logistics management systems already adopted in the motor carrier industry.[3]

1. Scope

FMCSA proposes mandatory installation and use of EOBRs in interstate CMVs currently required to complete RODS under 49 CFR 395.8. Under today's proposal, motor carriers currently allowed to use time cards could continue to do so under the provisions of 49 CFR 395.1(e)(1).

The provisions of 49 CFR 395.1(e)(2),[4] which also permit time-card use, are available to drivers of property-carrying CMVs that do not require a CDL and who operate within a 150 air-mile radius of the driver's normal work-reporting location under the current provisions.

In short, all SH drivers that record their HOS using the timecard provision of 49 CFR 395.1(e)(1) and (2) may continue to use timecards. The Agency acknowledges that drivers working for motor carriers that keep timecards under 49 CFR 395.1(e)(1) and (2) may occasionally operate beyond the parameters of those provisions (for example, by operating outside the specified 100- or 150-air-mile radii). Under this NPRM, they would be allowed to continue using RODS for those days, as opposed to using EOBRs. The Agency requests commenters' views related to this matter. Specifically, should motor carriers whose drivers usually operate within the limits of the 49 CFR 395.1(e)(1) and (2) provisions, but occasionally beyond them, be required always to use EOBRs? For these carriers, what threshold should trigger EOBR use? Should the threshold be based upon the amount of time drivers operate beyond the time limits or the number of miles traveled beyond the distance limits (for example, 1 day per week, 2 days per week, 5 days per month, or another threshold)? Should the threshold be based upon the proportion of drivers working for a given motor carrier who operate beyond the time or distance limits?

The Agency considered including carriers, vehicles, and drivers of bulk HM in this NPRM. It did so because a crash involving a CMV transporting bulk HM can endanger a large number of people, cause significant damage to infrastructure, and generate greater traffic congestion than a crash involving a CMV transporting other cargoes. Although these events are infrequent,

[3] More information about the widespread availability can be found in Appendix F of the RIA associated with this rulemaking.

[4] There are currently proposals to change these. Please *see* NPRM for the HOS Rulemaking (75 FR 80014, December 21, 2010) for more information.

the Pipeline and Hazardous Materials Safety Administration's Hazardous Materials Risk Management Program considers the potential risks they pose to persons, property, and the environment to be "low probability, high consequence events" (Comparative Risks of Hazardous Materials and Non-Hazardous Materials Truck Shipment Accidents/Incidents, Final Report. Prepared for Federal Motor Carrier Safety Administration, March 2001). The Agency seeks additional data and information concerning the safety of bulk HM carriers in that are not currently required to use RODS. This will aid the Agency in determining whether to require this category of motor carriers to use EOBRs.

Similarly, the risk of fatalities or serious injuries when a crash involves a passenger-carrying CMV is such that the Agency considered proposing a requirement for EOBR use in this industry sector (excluding the 9–15 passenger carriers not for direct compensation segment). DOT's Motor Coach Safety Action Plan notes seven priority action items to reduce motorcoach crashes, fatalities, and injuries. The first priority action item is to initiate rulemaking to require EOBRs on all motorcoaches. The provisions of today's proposal would apply only to those passenger carrier operations where the driver is required to complete a RODS. The Agency, however, considered proposing a requirement for SH motor carriers of passengers to use EOBRs. It seeks additional data and information about the safety of this group of carriers, drivers, and vehicles.

FMCSA considered requiring only drivers in LH operations (that is, those operating beyond a 150 air-mile radius) to use EOBRs. An "LH only" option would address the segment of the motor carrier industry with the highest safety and HOS compliance gaps and has the highest estimated net benefit. However, it would not address the safety concerns associated with SH motor carriers, especially those operations on the days when RODS, rather than timecards, are required. FMCSA requests comment on the costs, benefits, and practicality of implementing a "LH Only" option.

The Agency also considered requiring EOBRs for all motor carriers subject to 49 CFR part 395. The estimated compliance costs of this "true universal" approach, which the National Transportation Safety Board (NTSB) [5] and others advocated, exceed the estimated safety benefits for most SH motor carriers; and the overall net benefits are negative. The option selected in the proposed rule is estimated to generate benefits that exceed the costs of installing EOBRs and the costs associated with increased levels of compliance with the HOS rules. This option also has the highest estimated net benefits of the options considered for this proposed rulemaking. It also acknowledges the operational distinctions between motor carriers allowed to use timecards under 49 CFR 395.1(e)(1) and (2) exclusively, and the other motor carriers that would be required to use EOBRs. More information concerning the estimated costs and benefits is available in the RIA associated with this rulemaking.

Although not analyzed as part of this rulemaking action, FMCSA also requests comments on the advantages, disadvantages, and practicality of a potential exemption from the EOBR requirements for motor carriers with few or no HOS violations.

Finally, FMCSA proposes changing the term "activity" to "status" in § 395.8(e)(1) to clarify that HOS requirements include completing records of duty status—a commonly used term of art in part 395.

2. Transition Period and Compliance Date

It is likely that a final rule resulting from this NPRM would be published sometime prior to the June 4, 2012, compliance date for the April 2010 EOBR final rule. As stated in 49 CFR 385.805, FMCSA can issue remedial directives to any motor carrier subject to 49 CFR part 395 of the FMCSRs on and after June 4, 2012. Even if the final rule were to take effect shortly after publication, today's NPRM does not propose to change the compliance date of the April 2010 final rule.

The remedial directive provision in the April 2010 rule allows the Agency to require motor carriers to use EOBRs and also to retain a wider range of supporting documents than otherwise would be required. Even after the compliance date proposed in this NPRM for the transition to mandatory EOBR use, the Agency would retain the authority to issue remedial directives to:

- Motor carriers subject to 49 CFR part 395 but not otherwise required to use AOBRDs or EOBRs, and
- Motor carriers who use EOBRs, but have HOS violations that would trigger a remedial directive could be required to retain and maintain supporting documents verifying driving time.

In proposing a compliance date for mandatory use of EOBRs, the Agency considered the safety benefits as well as the potential cost impacts to motor carriers. The annualized cost for a motor carrier that does not currently use a fleet management system (FMS) or other "EOBR-ready" system ranges from $525 to $785 per power unit (PU). For a motor carrier that uses an "EOBR-ready" FMS, the annualized cost is $92 per PU. Considering that the estimated annual revenue per PU (on an industry-wide basis) is approximately $172,000, the annual cost of an EOBR is between 0.3 percent and 0.5 percent of operating revenue. When the costs of purchasing, completing, auditing, and storing paper RODS, and the potential for improved productivity resulting from motor carriers' having access to more comprehensive EOBR data are considered, using EOBRs can actually be less expensive than using RODS.[6]

The fact remains, however, that the aggregate impact of a wider EOBR mandate will be significant because of the large number of small business entities that will be required to install and use EOBRs in their CMVs. The motor carrier industry is extremely diverse in terms of the size of fleets, the types of passengers or commodities transported, and the size of businesses. The Agency anticipates that a motor carrier operating a fleet of 150 or fewer PUs would likely be considered small under Small Business Administration (SBA) guidelines. About 99 percent of motor carriers of property and 96 percent of motor carriers of passengers in FMCSA's Motor Carrier Management Information System (MCMIS) would be considered small businesses.

For these reasons, FMCSA is proposing a compliance date for mandatory EOBR use 3 years after the effective date of a final rule. The Agency seeks comment on factors it should consider to determine if the compliance date might need to be adjusted and, if so, how. For example, should larger motor carriers be required to install and use EOBRs earlier than smaller ones; and what should the number of PUs be to determine this size threshold? Should EOBR use be phased-in over a period of time, in proportion to the number of PUs in a motor carrier's fleet? Are there other potential phase-in schedules FMCSA should consider? If so, please provide supporting data and information.

3. Incentives During the Transition

In the January 2007 NPRM, FMCSA acknowledged the concern at that time of many motor carriers that voluntary installation of EOBRs would place them

[5] NTSB Safety Recommendation H–07–041 issued on December 17, 2007.

[6] Keith R. Klein, Transport America, Chairman MTA, "Electronic Onboard Recorders and You" *Trucking Minnesota,* May 2010.

at a competitive disadvantage compared to carriers not using EOBRs. In response, FMCSA's April 2010 EOBR final rule provided two incentives to promote motor carriers' use of EOBRs that comply with 49 CFR 395.16:

(1) Motor carriers voluntarily using EOBRs that comply with 49 CFR 395.16 will receive partial relief from the supporting documents requirements of 49 CFR part 395. Specifically, these motor carriers will no longer be required to retain and maintain supporting documents related to driving time because this information will be maintained by and be accessible from the EOBR.

(2) The HOS portion of a compliance review will include both focused and random samples, but only the random sample results will be used to assign the carrier a safety fitness rating under 49 CFR part 385. If FMCSA finds a 10 percent or higher HOS-violation rate based on an initial focused sample, this may be used as the basis for a possible civil penalty. The assessment would also include a random sampling of the motor carrier's overall HOS records; this would be used as the basis for a safety fitness rating. Motor carriers required to use EOBRs under the terms of a remedial directive do not have access to this incentive.

These incentives would continue to be available to motor carriers that voluntarily use EOBRs, until the compliance date of the final rule resulting from this rulemaking.

B. Supporting Documents: Discussion of New Proposal

1. HOS Management System

Motor carriers have a duty to ensure that their drivers are complying with the requirements and prohibitions imposed upon them (49 CFR 390.11). This proposed rulemaking would explicitly continue the obligation of motor carriers to use the information contained in supporting documents to ensure that their drivers comply with prescribed HOS limits.[7] The manner in which those documents are generated would not be material—the duty applies equally to documents generated by electronic mobile communications/tracking systems as well as to paper records (49 CFR 395.11(a)). Motor carriers could be deemed to have knowledge of the contents of those documents (49 CFR 395.11(b)).

An HOS management system refers to the controls, policies, programs, practices, and procedures used by a motor carrier to systematically and effectively monitor each driver's compliance with HOS requirements and to verify the accuracy of the information contained in each driver's RODS (49 CFR 395.11(a)). A motor carrier's duty to maintain an HOS management system, as explained in this NPRM, is analogous to its duties in other management areas that are already prescribed in the driver and vehicle regulations, such as 49 CFR 382.10 (motor carrier duty to ensure compliance with part 40 controlled substances and alcohol regulations), 49 CFR 391.1 (general duty of motor carriers to ensure qualifications of drivers), 49 CFR 391.25 (motor carrier duty to make annual inquiry and review of driving record), and 49 CFR 396.3 (motor carrier duty to make systematic inspection, repair, and maintenance of CMVs).

FMCSA also proposes to amend 49 CFR part 385, Safety Fitness Procedures, Appendices B and C, to include among the listed acute and critical citations a motor carrier's failure to adopt and properly administer an "hours of service management system." To meet the safety fitness standard in 49 CFR part 385, a motor carrier would have to have in place the controls, policies, programs, practices, and procedures to systematically and effectively monitor each driver's compliance with HOS requirements.

2. Definition of "Supporting Document" (49 CFR 395.2)

FMCSA proposes to adopt verbatim the statutory definition from HMTAA section 113(c): "A supporting document is any document that is generated or received by a motor carrier or CMV driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's RODS." Significantly, this Congressional direction expands the definition of "supporting documents" beyond Agency practice to include all documents that "could be used" to verify drivers' RODS.

3. Information in Supporting Documents (49 CFR 395.11(e))

Collectively, the supporting documents required must provide the motor carrier (and a safety investigator) with the driver's identification and a complete and accurate history of the driver's duty status, by date, time, and location. Therefore, as proposed in 49 CFR 395.11(e)(1), the proposed requirements for supporting documents would include certain elements. The descriptions of these elements would be consistent with the requirements of the April 2010 EOBR final rule. Safety investigators and other designated officials of FMCSA have the authority to request any record of a motor carrier, lessor, or person controlling or controlled by the motor carrier (49 U.S.C. 504(c)).

Supporting documents must contain the following required elements: Personal identification, date, time, and location, either in an individual document or in specified combination, as set forth in section 395.11(e).

Driver Identification

The driver's name, or a personal identification number (PIN) associated with the driver's name, is central to developing a RODS for each driver subject to the HOS regulations. A unit (vehicle) number may be used so long as it can be associated with the driver operating the vehicle at a specific date, time, and location.

Date and Time

The date of an event and the time the event began and ended (time-stamp) are central to place an event within a sequence of duty status items. For activities that represent a single point in time, this would include, for example, the time a CMV entered a shipper's or consignee's location.

Location

The location description associated with the supporting document must be sufficiently precise to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas; "location" means the nearest city, town, or village. If the location information is automatically recorded on an electronic document, it must be derived from a source not subject to alteration by the motor carrier, driver, or third party. Because AOBRDs and EOBRs play a significant role in motor carrier safety, FMCSA is proposing to modify 49 CFR 395.8(e) to prohibit tampering with or modifying these devices in such a way that driver duty status is not accurately recorded.

Related to this, the Agency is also proposing expressly to prohibit the use of electronic jamming devices that interfere with EOBRs and other electronic communication or vehicle tracking systems. Although FMCSA's goal is to forestall the use of jammers to avoid HOS compliance, some of these devices can interfere with air traffic

[7] Drivers operating under the 49 CFR 395.1(e) and (2) provisions are not subject to 49 CFR 395.8. 49 CFR 395.8(k) is the requirement for supporting documents. If a driver is eligible to use timecards, the carrier does not have to maintain supporting documents for those days.

control and other critical safety communication systems and thus pose additional safety risks.

4. Number, Type, and Frequency of Supporting Documents (49 CFR 395.11(e)(2) and (3))

Number

The number of documents that a motor carrier would need to examine, review, and retain will vary according to the motor carrier's operational circumstances. For example, operations where a motor carrier's drivers pick up fully-loaded trailers at one consignee, drive for several hundred miles, drop the trailer at its destination, and pick up another fully-loaded trailer from another consignee would have fewer on-duty non-driving periods than an operation where a driver brings an empty trailer to a shipper, loads it, and drops portions of the load at many receivers' locations. The number of documents could also vary according to the type and variety of a driver's daily assignments the quality and completeness of the supporting documents available, as well as the geographic area and commercial character of the region in which the carrier operates.

Type

Consistent with the direction provided in section 113(b)(2) of the HMTAA, this NPRM addresses the "type" of supporting documents that must be used to verify RODS. In doing so, the Agency recognizes the diversity of carrier operations and operational circumstances, and provides a flexible range of document types that a carrier can use to define its compliance system, appropriate with its needs. Examples of the types of documents that may be used to satisfy the supporting documents requirement are set out in the definition of "hours of service management system" in proposed 49 CFR 395.2. In contrast to the broad range of documents used as examples of supporting documents in current guidance at 49 CFR 395.8(k)(1), the Agency would require the motor carrier to retain sufficient supporting documents from the following four categories: (1) Payroll; (2) trip-related expense records and receipts; (3) FMS communication logs; and (4) a bill of lading or equivalent document. The supporting documents retained in the four categories identified might be individual records within a supporting document that covers multiple activities of individual drivers (such as dispatch records organized according to individual driver assignments) or specific types of activities of multiple drivers (such as pickup and delivery records for drivers assigned to one shipper's account) to reflect the beginning and end of each on-duty non-driving period.

Frequency

The Agency proposes to require carriers to retain, for each driver, at least one supporting document for the beginning and end of each ODND period. Only one document would be needed for the beginning and end of each ODND period if that document contained all of the data elements set forth in proposed 49 CFR 395.11(e) (*i.e.,* driver name or PIN, date and time, and location).

If the motor carrier does not retain one single supporting document that shows all of the required data elements, it would be required to retain sufficient documents, from any of the four categories listed above, to show collectively all of the required information: the driver identification and the location, date and time of the duty status changes. Such an approach addresses the requirements of section 113(c) of HMTAA regarding documents that can be used "as produced" separately or collectively, "with additional identifying information," to verify the accuracy of the driver's RODS.

The Agency stresses that the types of documents proposed to be retained would *not normally* be generated *during periods when drivers are actually off-duty.* However, FMCSA has the statutory authority to request any documents related to the operation of CMVs in interstate commerce.

Additionally, the Agency is responding to section 113(b)(2) of the HMTAA concerning "frequency" of supporting documents retention by adding proposed language under 49 CFR 395.8(h) to require the driver to submit all corresponding supporting documents to the employing motor carrier within 3 days following the completion of the RODS. Drivers will be required to forward supporting documents for which they are responsible (mainly, trip-related expense reports and receipts) for each day that they provide a RODS. Additionally, reflecting the widespread use of both electronic documents and document scanning systems, drivers would be required to forward those documents to the motor carrier within 3 days of receipt, instead of the 13 days in the current regulations (*see* 49 CFR 395.8(i)). Motor carriers and their customers are rapidly moving to electronic, paperless systems that can provide near-instantaneous access to HOS-relevant data and records. If a supporting document is submitted electronically, the driver should submit it the same duty day (49 CFR 395.11(h)).

5. Certification Provision (49 CFR 395.11(f))

The proposed "certification provision" acknowledges the diversity of carrier operations and the fact that the proposed minimum number of supporting documents will not be available to all drivers and/or carriers for all periods for each day of operation. The certification provision would allow a carrier that retains none of these supporting documents in its normal course of business or, alternatively, does not retain sufficient documents from the four categories noted above, to certify that no supporting documents were available.

The certification provision is not a "loophole," however; motor carriers that falsely certify the absence of supporting documents would be subject to the maximum penalty authorized by law. It is true that Congress instructed FMCSA, when assessing civil penalties, to consider a number of factors, including the nature, circumstances, extent, and gravity of the violation committed, as well as the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and other such matters as justice and public safety may require (49 U.S.C. 521(b)(2)(D)). But the overriding concern of Congress was clearly stated in the final sentence of that provision: "In each case, the assessment shall be calculated to induce further compliance." Because motor carriers that submit false certifications are deliberately subverting an essential element of the hours-of-service regulations and may well be concealing practices that place both their own drivers and the public at increased risk, FMCSA believes that nothing less than the maximum penalty would "induce further compliance." The Agency has no desire to impose the maximum penalty and does not expect to do so frequently; FMCSA's hope is that the deterrent effect of maximum penalties will make such action unnecessary. However, the Agency believes it should have these penalties available to deal with extreme violations. False certification is an egregious—indeed fraudulent—violation of the FMCSRs.

6. Retention and Maintenance of Supporting Documents (49 CFR 395.8(k)(1))

FMCSA proposes a retention period of 6 months as specified in section 113(b)(3) of the HMTAA. This is consistent with the existing retention

period for other HOS paper and electronic documents. However, the Agency seeks to clarify that while the section heading for current 49 CFR 395.8(k) is "*Retention* of driver's record of duty status," paragraph (k)(1) discusses the requirement to "maintain" such documents, which is consistent with judicial interpretation of maintaining documents for subsequent use by carrier and Agency personnel. Consequently, 49 CFR 395.8(k)(1) would be amended merely to add the phrase "retain and" prior to the term "maintain," to indicate the relationship between the terms.

7. Motor Carrier Self-Compliance Systems

The statute requires FMCSA to provide exemptions for qualifying "self-compliance systems," instead of supporting documents retention. In satisfaction of HMTAA section 113(b)(4), the proposed rule would add a provision to authorize, on a case-by-case basis, motor carrier self-compliance systems (49 CFR 395.11(i)). A motor carrier could apply for an exemption under existing part 381 provisions for additional relief from the requirements for retaining supporting documents for RODS. Among other things, an application for exemption must include a statement that explains how the applicant would ensure that he or she could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with 49 CFR part 395. We request that commenters provide information describing their self-compliance systems, or the systems they might anticipate developing.

VI. Rulemaking Analyses

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

Under E.O. 12866 (58 FR 51735, October 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is "significant," and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one likely to result in a rule that may:

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

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

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

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

FMCSA determines that this proposed rule would have an annual effect of $100 million or more. In addition, because of public interest about the rulemakings related to HOS compliance, it is a significant regulatory action within the meaning of the E.O. and under the regulatory policies and procedures of DOT. The Agency has, therefore, conducted an RIA of the costs and benefits of this NPRM. The RIA is summarized below. The full analysis is available in the docket pertaining to this rulemaking.

FMCSA evaluated the costs and benefits associated with the proposed rule on EOBRs and their affect on improving compliance with the underlying HOS rules. In the RIA associated with this rulemaking, the Agency updated its assessment of the baseline level of non-compliance with the current HOS rules to account for changes in certain factors such as inflation, a decline in HOS violations that has preceded the mandate for EOBR use, and the decline in CMV-related crashes. Included in this analysis as alternative baselines are Options 2 and 3 from the recently published NPRM for the HOS rules for property carriers (Option 1 of the HOS NPRM is to retain the current HOS rules). The major changes for both HOS options 2 and 3 are to: Allow at most 13 hours of on-duty time within the daily driving window; limit continuous on-duty drive time to 7 hours, at which point a 30 minute off-duty or sleeper-berth period would be required; and to require at least two overnight periods in each 34-hour restart period. HOS Option 2, however, also reduces daily drive time from 11 to 10 hours, while HOS Option 3 retains 11 hours of drive time. To avoid confusion between the HOS options and the options for the EOBR NPRM, HOS Option 2 and HOS Option 3 are referred to as Baseline 2 and Baseline 3, respectively.

The Agency is currently considering three options for the EOBR mandate. Option 1 would require EOBRs for all drivers required to use paper RODS. Option 2 expands Option 1 to include all passenger-carrying CMVs subject to the FMCSRs and all shipments of bulk HM, regardless of whether the drivers use paper RODs or are exempted from doing so, as described under the SH operations provisions in § 395.1(e). Option 3 would include all CMV operations subject to the HOS requirements.

In this NPRM, FMCSA also proposes changes to requirements concerning HOS supporting documents. The Agency has clarified its supporting document requirements, recognizing that EOBRs themselves serve as the most robust form of documentation for on-duty driving periods. The Agency has been careful not to increase the burden associated with retention of the supporting documents; but it also cannot claim, even with EOBR use, that it has reduced the burden of supporting documents.

Although the "foundation" RODS burden would drop dramatically, primarily due to the elimination of paper RODS, the overall supporting documents burden would not be reduced. This is because carriers will still be required to maintain supporting documents. In addition, while motor carriers may gain efficiencies in reviewing electronic RODS, as opposed to paper RODS, against supporting documents to ensure driver compliance, the overall burden of review for this task is not expected to change. These proposed changes are expected to improve the quality and usefulness of the supporting documents and, thereby, (1) improve the Agency's ability to effectively and efficiently review motor carriers' HOS records, and (2) detect and assess violations during on-site compliance reviews. The Agency is currently unable to evaluate the extent to which the proposed changes to the supporting documents requirements will lead to reductions in crashes.

The following table (Table 1) summarizes the analysis. The figures presented are annualized using 7 percent and 3 percent discount rates.

TABLE 1—ANNUALIZED COSTS AND BENEFITS (2008 $ MILLIONS) [8]

	7 Percent discount rate			3 Percent discount rate		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
I—EOBR Costs	1,586	1,643	1,939	1,554	1,610	1,900

TABLE 1—ANNUALIZED COSTS AND BENEFITS (2008 $ MILLIONS) [8]—Continued

	7 Percent discount rate			3 Percent discount rate		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
II—HOS Compliance Costs	398	404	438	398	404	438
III—Total Costs (I+II)	1,984	2,047	2,377	1,952	2,014	2,338
IV—Paperwork Savings [9]	1,965	1,965	1,965	1,965	1,965	1,965
V—Safety Benefits	734	736	746	734	736	746
VI—Total Benefits (IV+V)	2,699	2,701	2,711	2,699	2,701	2,711
VII—Net Benefits (VI–III)	715	654	334	747	687	373
VIII—Baseline 2 (HOS Option 2) Net Benefits	799	738	418	831	771	457
IX—Baseline 3 (HOS Option) Net Benefits	859	798	478	891	831	517

FMCSA estimates that all options presented in this RIA have positive net benefits under any baseline, that is, under any version of the HOS rules. However, the greatest safety impacts of the HOS rules are seen in LH operations, and the inclusion of SH operations diminishes the net benefits of this EOBR rule. Therefore Option 3, which includes all carrier operations, results in much lower net benefits as compared to Options 1 and 2. The alternative baselines reflect changes to the HOS rules that affect only LH, RODS-using operations.

A fundamental purpose of the HOS regulations is to reduce crash risk in order to improve safety, and as elaborated at length in the 2010 HOS proposed rule, the Agency has concluded that the proposed rules will have significant safety benefits. Ideally, the agency would have data to directly measure crash risk by hours of driving and other dimensions for which regulations are proposed. Because the Agency has been not been able to gather such data, it has based its analysis, in significant part, on share of crashes that are fatigue-coded.

The agency recognizes that using share of crashes that are fatigue-coded could have two possible problems: Accident inspectors may be more likely to code crashes as fatigue-related if the driver has been on the road longer. Also, the share of crashes that are coded as fatigue-related may conceivably increase simply because the share of crashes caused by other factors goes down. There could be no increase in the risk of a fatigue-related crash (the central question), but an increase in the share of fatigue-related crashes. The Agency has little evidence that either of these factors is a significant problem. Nonetheless, while the data are not as complete as FMCSA would like them to be, the Agency aimed to limit, to the extent possible, the likelihood that drivers will be fatigued, either when they come on duty or during or at the end of a working period. Safety benefits are based on this reduction in fatigue and an associated reduction in fatigue-coded crashes.

FMCSA sought information from the public on driving exposure data at each hour in order to be able to calculate relative crash risk at each hour. FMCSA seeks the same information for this rule since fatigue coded crashes are not the perfect measure of safety benefits from HOS compliance. If the agency receives information about relative crash risk, the agency will revise and update the benefits calculations for this EOBR provision in the final rule stage.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Number of Small Entities to Which the Rulemaking Would Apply

Under criteria established by the SBA, firms with annual revenues of less than $25.5 million are considered small for all North American Industrial Classification System (NAICS) codes falling under the truck transportation sub-sector (NAICS 484) or the bus transportation sub-sector (NAICS 485). Many motor carriers, however, are private carriers that transport goods or passengers for parent companies who are not primarily engaged in truck-transportation, for example, airlines, railroads, retail stores, and landscaping or home contracting businesses with SBA size thresholds associated with their industries that are different from those used for truck or bus transportation.

FMCSA does not collect revenue data for most carriers nor can it identify, carrier-by-carrier, to which industry sub-sectors each firm belongs. Carriers do, however, report the number of PUs they operate in the U.S. on Form MCS–150. With regard to truck PUs, the Agency determined in the 2003 Hours of Service Rulemaking RIA [10] that a PU produces about $172,000 in revenue annually (adjusted for inflation).[11] According to the SBA, motor carriers with annual gross revenue of $25.5 million are considered small businesses.[12] This equates to about 150 PUs (25,500,000/172,000). FMCSA believes that this 150 PU figure would be applicable to private carriers as well: Because the sizes of the fleets they are able to sustain are indicative of the overall size of their operations, large

[8] Compliance costs and safety benefits of the current HOS rules and the two alternate baselines reflect an estimated EOBR efficacy of 40 percent. Carriers would bear compliance costs that they are currently avoiding for the 40 percent of the HOS violations that continue to occur, and the public would accrue the safety benefits from eliminating these violations. The full analysis is available in the docket pertaining to this rulemaking. The steps used to derive the annualized figures in this table are also presented in detail in that analysis.

[9] There will be paperwork savings due to the elimination of paper RODS, but the Agency does not expect paperwork savings from changes to the supporting document requirements. Reductions to paperwork burden accrue only to operations required to use RODS, which are fully included in Option 1. The operations added in options 2 and 3 are exempt from paper RODS, and consequently would experience no paperwork savings from their elimination.

[10] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 22456—Published 4/23/2003.

[11] The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

[12] U.S. Small Business Administration, Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. *See* NAIC subsector 484, Truck Transportation.

CMV fleets can generally only be managed by large firms. There is a risk, however, of overstating the number of small businesses because the operations of some large non-truck or bus firms may require only a small number of CMVs. The Agency has identified about 482,000 motor carriers that operate 150 or fewer power units, about 99% of property carriers.

For passenger carriers, the Agency conducted a preliminary analysis to estimate the average number of PUs for a small entity earning $7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per PU for the trucking industry ($172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per PU as trucks,[13] and it is assumed, therefore, that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency examined its registration data and found that 96 percent of, or just over 19,000, interstate passenger carriers have 47 PUs or fewer.

Reporting and Recordkeeping

FMCSA believes that implementation of the proposed rule would not require additional reporting, recordkeeping, or other paperwork-related compliance requirements beyond those that are already required in the existing regulations. In fact, the proposed rule is estimated to result in paperwork savings, particularly from the elimination of paper RODS. Drivers can complete, review, and submit EOBR records much more rapidly compared to paper RODS. Furthermore, motor carriers would experience compensatory time-saving and administrative efficiencies as a result of using EOBR records in place of paper RODS. The level of savings would vary with the size of the carrier implementing the systems (larger carriers generally experience greater savings).

Under current regulations, most CMV drivers are required to fill out RODS for every 24-hour period. The remaining population of CMV drivers is required to fill out time cards at their workplace (reporting location). Motor carriers must retain the RODS (or timecards) for 6 months. FMCSA estimates annual recordkeeping cost savings from this proposed rule of about $688 per driver. This is comprised of $486 for a reduction in time drivers spend completing paper RODS and $56 submitting those RODS to their employers; $116 for motor carrier clerical staff to handle and file the RODS; and $30 for elimination of expenditures on blank paper RODS for drivers. Two of the options discussed in this NPRM would extend the EOBR mandate to carrier operations that are exempt from the RODS. Paperwork savings would not accrue to drivers engaged in these operations.

Help for Small Entities

Of the population of motor carriers that FMCSA regulates, 99 percent of motor carriers of property and 96 percent of motor carriers of passengers are considered small entities under the SBA's definition. Because small businesses are such a large part of the demographic the Agency regulates, providing exemptions to small business to permit noncompliance with safety regulations is not feasible and not consistent with good public policy. The safe operation of CMVs on the Nation's highways depends on compliance with all of FMCSA's Safety Regulations. Accordingly, the Agency would not allow any motor carriers to be exempt from coverage of the rule based solely on a status as a small entity.

FMCSA analyzed an alternative 5-year implementation schedule that would have provided a longer implementation period for small businesses. However, the estimated cost of compliance for motor carriers, including small businesses, did not decrease from the 3-year "baseline" proposed implementation period. Furthermore, a considerably longer implementation period could compromise the consistency of compliance-assurance and enforcement activities, and, thereby, diminish the rule's potential safety benefits. Therefore, the Agency's proposal includes a single compliance date for all motor carriers that would be subject to the new rule's requirements.

However, the Agency recognizes that small businesses may need additional information and guidance in order to comply with the proposed regulation. In order to improve their understanding of the proposal and any rulemaking that would result from it, FMCSA proposes to conduct outreach aimed specifically at small businesses. FMCSA would conduct Webinars and other presentations as needed and upon request, at no charge to the participants. These would be held after the final rule has published and before the rule's compliance date. To the extent practicable, these presentations would be interactive. Their purpose would be to describe in plain language the compliance and reporting requirements so that they are clear and readily understood by the small entities that would be affected

EOBRs can lead to significant paperwork savings that can in part or fully offset the costs of the devices. The Agency, however, recognizes that these devices entail a significant up-front investment than can be burdensome for small carriers. At least one vendor, however, provides free hardware and recoups the cost of the device over time in the form of higher monthly operating fees. The Agency is also aware of lease-to-own programs that allow the carriers to spread the purchase costs over several years. Nevertheless, the typical carrier would likely be required to spend $1,500–$2,000 per CMV to purchase and install EOBRs, and several hundred dollars per year for service fees. This estimate is higher than the estimate used in the April 2010 EOBR rulemaking for two primary reasons.

This proposed mandate would be permanent and also would require EOBRs to be installed and used in approximately 20 times as many CMVs than were estimated to be affected by the April 5, 2010, final rule. Therefore, the Agency cannot assume that an adequate number of the lower-cost devices would be available to meet the needs of that larger market. Current revenue data from the manufacturer of the device cited in the April 2010 final rule indicate that its market share is relatively low.

A second reason for using a higher cost for this analysis is that, in response to motor carrier customer demand, EOBR suppliers have expanded the functionality of their products and services. Hours-of-service recording and monitoring are functions commonly offered as part of comprehensive fleet management systems, rather than in stand-alone devices. Many motor carriers are recognizing the potential operational benefits they can gain from the use of fleet management systems, and the marketplace is responding with products and services tailored to motor carriers of all sizes. However, the Agency is not dismissing the possibility that "stand-alone" EOBRs, providing only hours-of-service recording and reporting (similar to the first AOBRDs in the 1980s), may be offered for sale or lease at a lower cost than devices with other functionalities in addition to HOS compliance. The Agency requests comments and data about EOBR cost.

[13] FMCSA, "Large Truck and Bus Crash Facts 2008," Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx.*

Based on direct experience with the devices and conversations with vendors, the Agency believes these devices are extremely durable and can be kept operational for many years. In addition to purchase costs, carriers would also likely spend about $40 per month per CMV for monthly service fees.

On January 18, 2011, the President issued a memorandum entitled *Regulatory Flexibility, Small Business, and Job Creation*. In it, the President directed agencies to consider certain flexibilities for small entities. Furthermore, the President directed agencies to include an explicit justification for not providing such flexibilities and directs the agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. Such flexibility may take many forms, including:

- Extended compliance dates that take into account the resources available to small entities;
- Performance standards rather than design standards;
- Simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- Different requirements for large and small firms; and
- Partial or total exemptions.

The President further directs that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule. The Agency requests public comment on the extent to which flexibility could be incorporated into the rulemaking, beyond the options considered in the proposal, while fulfilling its safety mandate.

In establishing FMCSA, Congress's enabling legislation called safety "our highest priority." Motor Carrier Safety Improvement Act of 1999, sec. 113, Public Law 106–159, 113 Stat. 1748, 1750. Our regulatory authority over motor carriers stems from 1935 and has since been augmented by comprehensive legislation that conferred broad rulemaking authority. We have attempted to balance our statutory obligations with the need to consider regulatory alternatives and the burdens they present to various entities, including small entities. But given our safety mandate, exempting 98% of our regulated population from this new requirement based simply on their small business status would severely undermine our safety mission and ignore our congressional mandate. Our proposal did consider alternatives and exemptions, as discussed earlier in this document. The Agency does not believe that it is feasible to exempt small businesses from a requirement to use EOBRs. Because of the nature of the commercial motor vehicle industry, there would be no reliable way for an enforcement official to determine if a driver or CMV is operating as a small business on a particular day. Even if the Agency could develop a system to make that daily determination, it has not been analyzed to determine if it could be implemented in a cost beneficial manner.

Also, as we propose in the regulatory text at 49 CFR 395.11(i) to address supporting documents, motor carriers can apply for an exemption based on a process under 49 CFR part 381. A motor carrier could apply for an exemption under existing part 381 provisions for additional relief from the requirements for installing and using EOBRs. Such exemptions can be granted for up to two years, and the Agency believes this is the best way to balance regulatory relief with its safety mission.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $140.8 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rule would not result in the expenditure by State, local and Tribal governments, in the aggregate, of $140.8 million or more in any 1 year, nor would it affect small governments. As Table 2 shows, this rulemaking would result in private sector expenditures in excess of the threshold for any of the proposed options. Gross costs, however, are expected to be more than offset in savings from paperwork burden reductions.

TABLE 2—ANNUALIZED NET EXPENDITURES BY PRIVATE SECTOR (MILLIONS)

	Option 1	Option 2	Option 3
Total EOBR Cost	$1,586	$1,643	$1,939
Total Paperwork Savings	1,965	1,965	1,965
Net EOBR Cost	−379	−322	−26

E.O. 13132 (Federalism)

A rule has implications for Federalism under Executive Order 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on such governments. This proposed action has been analyzed in accordance with E.O. 13132. FMCSA has determined that this rule would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. A State that fails to adopt the proposed amendments, if finalized, within 3 years of the effective date of the final rule, will be deemed to have incompatible regulations and will not be eligible for Basic Program or Incentive Funds under the Motor Carrier Safety Assistance Program in accordance with 49 CFR 350.335(b).

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This NPRM proposes regulatory changes to several parts of the FMCSRs, but only those applicable to part 395, "Hours of Service of Drivers," would alter or impose information collection requirements. The information collection requirements of this NPRM would affect OMB Control Number 2126–0001, which is currently approved through August 31, 2011, at 181,270,000 burden hours.

As described under the analysis concerning E.O. 12866, nearly all of the estimated reduction in paperwork burden that would result from this rulemaking would come from a reduction in the burden associated with the elimination of RODS for nearly all motor carrier operations. This reduction would not take place, however, until three years after the effective date of a final rule resulting from this proposed rulemaking action.

OMB requires agencies to provide a specific, objective estimate of the burden hours imposed by their information collection requirements (5 CFR 1320.8(a)(4)). This NPRM proposes a compliance date 3 years after the date of publication of the final rule to allow regulated entities a reasonable opportunity to satisfy its requirements. The PRA limits estimates of paperwork burdens to a 3-year period. During the initial 3 years following publication of the final rule, the requirements of part 395, including information collection requirements, would remain unchanged. At an appropriate time, the Agency would provide notice and request public comment on the changes in the paperwork burden of part 395 resulting from implementation of the rule after the 3-year period. At the present time, the Agency believes that the regulatory changes proposed by this NPRM will ultimately effect a net reduction in the paperwork burden of OMB Control Number 2126–0001 (*See* the RIA for more information). The Agency requests information concerning any changes in paperwork burden from motor carriers currently using EOBR devices.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.,* as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. In accordance with its procedures for implementing NEPA (FMCSA Order 5610.1, Chapter 2.D.4(c) and Appendix 3), FMCSA prepared a draft Environmental Assessment (EA) to review the potential impacts of this proposed rulemaking. The draft EA findings are summarized below. The full EA is in the docket pertaining to this rulemaking.

Implementation of this proposed action would alter to some extent the operation of CMVs. However, the proposal, if implemented, would not require any new construction or change significantly the number of CMVs in operation. FMCSA finds, therefore, that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under section 4(f) would not be impacted by this rulemaking.

The EA finds negligible impacts on air quality and no adverse effect on public safety. FMCSA anticipates that drivers of CMVs operated by carriers required to use EOBRs would increase their compliance with the requirements of the HOS rules. From an emissions standpoint, this could lead to drivers taking more off-duty time parked with the engine idling, which increases engine emissions on a per-mile basis. This rulemaking, however, also has the potential to prevent CMV crashes and resulting emissions. When emissions that would otherwise result from prevented CMV crashes are subtracted from the emissions generated by additional compliance with the HOS regulations, FMCSA determines that the overall change in pollutants would be negligible. Because of the enhanced HOS compliance that is likely to result from this rulemaking, it is also likely that the rulemaking would result in an increase in public safety. Drivers for carriers brought into HOS compliance would experience reduced crash risk and be less likely to have crashes. Separately, the rulemaking proposes to eliminate the use of paper-based RODS documentation, which reduces paper use.

As discussed in the EA, FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency.

FMCSA concludes that the rule changes would have an overall minimal impact on the environment, and therefore would not require an environmental impact statement. The provisions under the proposed action do not, individually or collectively, pose any significant environmental impact. FMCSA requests comments on this analysis.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA determines that the proposed rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing "economically significant" rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this proposed rule is economically significant; but it would cause no environmental or health risk that disproportionately affects children.

E.O. 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB.

FMCSA determined that there are no voluntary national consensus standards for the design of EOBRs as complete units. However, as a part of the April 2010 EOBR final rule, the Agency found there are many voluntary consensus standards concerning communications and information interchange methods that could be referenced as part of comprehensive performance-based requirements for EOBRs to ensure their reliable and consistent utilization by motor carriers and enforcement officers. For example, the digital character set

requirement references the American Standard Code for Information Interchange (ASCII) character set specifications, the most widely used form of which is ANSI X3.4–1986. This is described in the Document Information Systems—Coded Character Sets—7-Bit ASCII (ANSI document ANSI INCITS 4–1986 (R2002)) published by the American National Standards Institute (ANSI). In another example, the Agency would reference the 802.11 family of standards for wireless communication published by Institute of Electrical and Electronics Engineers (IEEE). The April 2010 EOBR final rule incorporated by reference these standards, and others, in 49 CFR 395.18.

As part of the development of the April 2010 EOBR final rule, FMCSA reviewed and evaluated the European Commission Council Regulations 3821/85 (analog tachograph) and 2135/98 (digital tachograph). These are not voluntary standards, but rather are design-specific type-certification programs. The Agency concluded that these standards lack several features and functions (such as CMV location tracking and the ability for the driver to enter remarks) that FMCSA believes are necessary to include in its proposed performance-based regulation. It further concluded that the standards require other features (such as an integrated license document on the driver's data card) that are not appropriate for U.S. operational practices.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Although the Agency determined that the same personally identifiable information (PII) for CMV drivers currently collected as part of the RODS and supporting documents requirements would continue to be collected under this rulemaking, it recognizes the significance of the decision to require, even in limited circumstances, that PII, previously kept in paper copy, now be kept electronically. Privacy is a significant consideration in FMCSA's development of this proposal. As stated earlier, FMCSA recognizes that the need for a verifiable EOBR audit trail (a detailed set of records to verify time, date, and physical location data for a particular CMV) must be counterbalanced by privacy considerations. As part of the development of the April 2010 EOBR final rule, the Agency considered, but rejected, certain alternative technologies to monitor drivers' HOS (including in-cab video cameras and bio-monitors) as too invasive of personal privacy. All CMV drivers subject to 49 CFR part 395 must have their HOS accounted for to ensure they have adequate opportunities for rest. This NPRM would not change the Agency's policies, practices, or regulations regarding its own collection and storage of HOS records of individual drivers whose RODS are reviewed. It would not change the technology by which compliance is to be documented, as stated in the April 2010 EOBR final rule, in a way that enhances both the sharing of information and its capacity to be data processed.

As stated in the April 2010 final rule, and as is the case with all FMCSRs, the HOS information recorded on EOBRs would be accessible to Federal and State enforcement personnel only when compliance assurance activities are conducted at the facilities of motor carriers subject to the RODS requirement or when the CMVs of those carriers are inspected at roadside. Motor carriers would not be required to upload this information into Federal or State information systems accessible to the public. This would aid data security and ensure that general EOBR data collection does not result in a new or revised Privacy Act System of Records for FMCSA. (Evidence of violation of any FMCSA requirements uncovered during a compliance or enforcement activity is transferred to a DOT/FMCSA Privacy Act System of Records.) As FMCSA has previously discussed regarding EOBRs, the Agency complies with the Freedom of Information Act in implementing DOT regulations (75 FR 17221, April 5, 2010; 49 CFR part 7).

What this NPRM would change, and change significantly, is the capacity of HOS data to be processed and converted to more usable information for the purpose of determining drivers' and motor carriers' compliance with the HOS regulations. Although no CMV operator would be required to upload this data to a Federal or State database accessible to the public, the electronic formulation of the data would make it easier for a CMV operator to keep track of the activities of its drivers. Similarly, Federal and State law enforcement and safety authorities, including FMCSA, would be better able to do the same. As shown in other contexts, the increased accessibility, accuracy, and reliability of geospatial location information has made electronically generated and preserved data attractive to a variety of audiences. As discussed above, the Agency has tailored this NPRM to recognize the privacy interests of CMV drivers.

The entire privacy impact assessment is available in the docket for this proposed rule.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA is proposing to amend 49 CFR Chapter III as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113,13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.3 by adding a definition for the term "Hours of Service Management System" in alphabetical order to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Hours of Service Management System is defined in § 395.2 of this subchapter.

* * * * *

3. Amend Section VII of Appendix B to part 385, by adding the following violations in numerical order to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 395.8(e)(1) Failing to require a driver to complete the record of duty status required by either this section, § 395.15 or § 395.16; failing to preserve a record or making false reports (critical).

§ 395.8(e)(2) Failure to prohibit a driver from disabling, deactivating, disengaging,

jamming or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recorder or electronic on-board recorder (critical).

* * * * *

§ 395.11(a) Failing to establish, implement, and maintain an hours-of-service management system with controls, policies, programs, practices, and procedures to effectively monitor each driver's compliance with the hours of service requirements, and to prevent and detect violations of Part 395 (acute).

§ 395.11(c) Failing to identify each supporting document or maintain the supporting documents in such a manner that permits the matching of those records to the driver's original record of duty status (critical).

§ 395.11(d) Intentionally destroying, mutilating, or altering a supporting document; or failing to prevent alteration of supporting documents; failing to prevent alteration of supporting documents which reduces their accuracy (acute).

§ 395.11(e) Failing to maintain all elements of the supporting documents as required by this section or § 395.8. (critical).

§ 395.11(f) Making a false certification regarding the receipt or retention of supporting documents (acute).

§ 395.11(g) Failing to maintain all elements of the supporting documents as required in a remedial directive (acute).

§ 395.11(h) Failing to forward, within 3 days of the 24-hour period to which the document pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later, all required supporting documents and the original of the record of duty status. Failing to forward supporting documents provided electronically from the driver to the carrier within 24 hours (critical).

* * * * *

4. Amend Appendix C to part 385 by adding the following violations in numerical order to read as follows:

Appendix C to Part 385—Regulations Pertaining to Remedial Directives in Part 385, Subpart J

* * * * *

§ 395.8(e)(1) Failing to require a driver to complete the record of duty status required by either this section, § 395.15 or § 395.16; failing to preserve a record or making false reports (critical).

§ 395.8(e)(2) Failure to prohibit a driver from disabling, deactivating, disengaging, jamming or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recorder or electronic on-board recorder (critical).

* * * * *

§ 395.11(a) Failing to establish, implement, and maintain an hours-of-service management system with controls, policies, programs, practices, and procedures to effectively monitor each driver's compliance with the hours of service requirements, and to prevent and detect violations of part 395 (acute).

§ 395.11(c) Failing to identify each supporting document or maintain the supporting documents in such a manner that permits the matching of those records to the driver's original record of duty status (critical).

§ 395.11(d) Intentionally destroying, mutilating, or altering a supporting document; or failing to prevent alteration of supporting documents; failing to prevent alteration of supporting documents which reduces their accuracy (acute).

§ 395.11(e) Failing to maintain all elements of the supporting documents as required by this section or § 395.8. (critical).

§ 395.11(f) Making a false certification regarding the receipt or retention of supporting documents (acute).

§ 395.11(g) Failing to maintain all elements of the supporting documents as required in a remedial directive (acute).

§ 395.11(h) Failing to submit or forward by mail the driver's supporting documents, within 3 days of the 24-hour period to which the document pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later, all required supporting documents and the original of the record of duty status. Failing to forward supporting documents provided electronically from the driver to the carrier within 24 hours (critical).

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

6. Amend § 390.5 by adding a definition for "Document," in alphabetical order, to read as follows:

§ 390.5 Definitions.

* * * * *

Document means any writing and any electronically-stored information, including data or data compilation(s), stored in any medium from which information may be obtained.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

7. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502, Sec. 229, Pub. L. 106–159, 113 Stat. 1748, 1773 (as transferred by Sec. 4415 and amended by Sec. 4130–4132 of Pub. L. 106–59, 119 Stat. 1144, at 1726, 1743–1744); Sec. 4143, Pub. L. 106–59, 119 Stat. 1144, 1744; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

8. Amend § 395.2 by adding the following definitions in alphabetical order, to read as follows:

§ 395.2 Definitions.

* * * * *

Hours of service management system means the controls, policies, programs, practices, and procedures used by a motor carrier systematically and effectively to monitor drivers' compliance with hours of service requirements and to verify the accuracy of the information contained in drivers' records of duty status. The management system must include, at a minimum, the use of documents, records, and information generated or received by the motor carrier in the normal course of business. These documents and records, and this information must include, but are not limited to, driver payroll records, trip-related expense reports and receipts, bills of lading or equivalent documents, and fleet management system communication records (any record of communication between a motor carrier and a driver in the normal course of business).

* * * * *

Motor carrier, as defined in § 390.5, includes, for purposes of this part, an owner-operator leased to a carrier subject to a remedial directive issued under part 385, subpart J, regardless of whether the owner-operator has separate operating authority under part 365 of this subchapter.

* * * * *

Supporting document, for the purposes of this part, means a document that is generated or received by the motor carrier in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status.

* * * * *

9. Amend § 395.8 by revising paragraphs (a) and (e), the heading of paragraph (k), and paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

(a) Except as provided in § 395.1(e)(1) and (2), every motor carrier subject to the requirements of this part must require every driver used by the motor carrier to record his/her duty status for each 24-hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section.

(1) Every driver who operates a commercial motor vehicle in operations other than those described in paragraph (a)(2) of this section must record his/her duty status, in duplicate, for each 24-hour period. The duty status time

must be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. This format may be used:

(i) By those operations described in § 395.1(e)(1) and (2), where a driver operates a commercial motor vehicle outside of the distance radius or for longer periods of time specified in those provisions no more than 2 days in any 7-day period; and

(ii) By those operations subject to § 395.16(a)(3) until [INSERT DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(2) Every driver operating a commercial motor vehicle must record his/her record of duty status using either an automatic on-board recording device meeting the requirements of § 395.15 or an electronic on-board recorder meeting the requirements of § 395.16 installed in the vehicle. The requirements of this section apply to: All motor carriers required to maintain RODS except those eligible to use time records under § 395.1(e)(1) and (2).

* * * * *

(e)(1) A motor carrier must require drivers to complete the record of duty status required by either this section, § 395.15 or § 395.16 and must preserve a record of such duty status. A motor carrier must not make false reports in connection with such duty status.

(2) No motor carrier shall permit or require any driver used by it to disable, deactivate, disengage, jam or otherwise block or degrade a signal transmission or reception; or reengineer, reprogram, or otherwise tamper with an automatic on-board recorder or electronic on-board recorder so that the device does not accurately record the duty status of a driver; nor shall any driver engage in the activities prohibited under this paragraph.

* * * * *

(k) *Retention of driver's record of duty status and supporting documents.* (1) Each motor carrier shall retain and maintain records of duty status and all supporting documents required under this part, for each of its drivers, for a period of 6 months from the date of receipt.

* * * * *

10. Revise § 395.11 to read as follows:

§ 395.11 Motor carrier's hours of service management system and oversight.

(a) *Scope.* (1) Every motor carrier subject to the requirements of this part shall establish, use, and maintain an hours of service management system, as defined in § 395.2, capable of preventing and detecting violations of this part by each of its drivers. The management system must include, at a minimum, the use of documents, records, and information generated or received by the motor carrier in the normal course of business.

(2) This section also applies to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs unless otherwise provided in the remedial directive.

(b) A motor carrier shall be deemed to have knowledge of any and all documents in its possession, and any and all documents that are available to the motor carrier and that the carrier could use in its hours of service management system. "Knowledge of a document" means knowledge of both the fact that it exists and its specific contents.

(c) The motor carrier must maintain supporting documents in such a way that they may be effectively matched to the corresponding driver's record of duty status.

(d) A motor carrier or a driver must not obscure, deface, destroy, mutilate, or alter existing information contained in the supporting document.

(e) *Supporting documents required (motor carriers not subject to a Remedial Directive under 49 CFR part 385, subpart J):*

(1) In addition to records generated from EOBRs that meet, at a minimum, the requirements of § 395.16, motor carriers must retain and maintain the documents required by this section for every drivers' duty day. Except as provided in paragraph (e)(3) of this section, a supporting document or documents must contain the following information:

(i) *Driver name or personal identification number (PIN) associated with the driver's name, or another identifying number that is issued to the driver.* A unit (vehicle) number may be used so long as it can be associated with the driver operating the vehicle at a specific date, time, and location.

(ii) *The date.* The date recorded must be the date at the location where it is recorded. If the date is automatically recorded on an electronic document, it must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(iii) *The time.* The time recorded must be convertible to the local time at the location where it is recorded. If the time is automatically recorded on an electronic document, it must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(iv) *The location.* The location description must include the name of the nearest city, town, or village to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas. If the location information is automatically recorded on an electronic document, it must be derived from a source not subject to alteration by the motor carrier, driver, or third party.

(2) For any non-driving period after coming on duty following 10 consecutive hours off duty, with the exception of any sleeper berth period of at least 2 hours but less than 10 consecutive hours pursuant to § 395.1(g)(1)(ii)(A)(2) and any off-duty period of at least 2 hours but less than 8 consecutive hours pursuant to § 395.1(g)(3), drivers and motor carriers must retain and maintain at least one document as described in this paragraph from among the four categories listed below:

(i) Payroll;

(ii) Trip-related expense records and receipts;

(iii) Fleet management system communication logs; and

(iv) A bill of lading or equivalent document.

(3) If a motor carrier retains a single supporting document that shows the driver identification, date, time, and location for the beginning and end of any on-duty not driving period, that is the only document the carrier must retain and maintain for that period. However, if the motor carrier does not retain and maintain one single supporting document that shows all of these items, it must retain and maintain sufficient documentation from the categories listed above to show the driver identification and (i) the location, and date, and time of the duty status change, when used together, or (ii) the location, date, and time of the duty status changes.

(f) If a motor carrier does not receive or retain any supporting documents from the classes of documents listed in paragraph (e)(2) of this section, then the motor carrier must certify that it does not or did not receive these documents. If a motor carrier is found to have falsely certified to not having supporting documents, it would be subject to a civil penalty for falsification. Motor carriers submitting false certifications are subject to the maximum penalty authorized under 5 U.S.C. 521, irrespective of the Uniform Fine Assessment algorithm or other Agency

penalty calculations implementing 49 U.S.C. 521(b)(2)(D).

(g) *Supporting documents required (motor carriers subject to a Remedial Directive under 49 CFR part 385, subpart J).* Motor carriers subject to a Remedial Directive must retain and maintain all supporting documents as described in that directive.

(h) The driver must submit or forward by mail the driver's supporting documents and the original record of duty status to the regular employing motor carrier within 3 days of the 24-hour period to which the receipt pertains, or the day the document comes into the driver's or motor carrier's possession, whichever is later. If a supporting document is submitted electronically, the driver shall submit the supporting document within 24 hours.

(i) FMCSA may authorize on a case-by-case basis, motor carrier self-compliance systems.

(1) Requests for supporting document self-compliance systems may be submitted to FMCSA under the procedures described in 49 CFR part 381, subpart C (Exemptions).

(2) FMCSA will consider requests concerning types of supporting documents maintained by the motor carrier under § 395.8(k)(1) and the method by which a driver retains and maintains a copy of the record of duty status for the previous 7 days and makes it available for inspection while on duty in accordance with § 395.8(k)(2).

(j) Motor carriers maintaining date, time, and location data produced by an EOBR that complies with § 395.16 need only maintain additional supporting documents (*e.g.,* driver payroll records, fuel receipts) that provide the ability to verify non-driving status according to the requirements of § 395.8(a)(2).

11. Amend § 395.16 by revising paragraph (a) to read as follows:

§ 395.16 Electronic on-board recording devices.

(a) This section applies to electronic on-board recording devices (EOBRs) used to record the driver's hours of service as specified by part 395. Every driver required by a motor carrier to use an EOBR shall use such device to record the driver's hours of service.

(1) Motor carriers subject to a remedial directive to install, use, and maintain EOBRs, issued in accordance with 49 CFR part 385, subpart J, must comply with this section.

(2) For commercial motor vehicles manufactured on and after June 4, 2012, motor carriers must install and use an electronic device that meets the requirements of this section to record hours of service.

(3) Motor carriers operating commercial motor vehicles must install EOBRs and require their drivers to use an EOBR to record the driver's hours of service except for commercial motor vehicles operated by drivers eligible to use only accurate and true time records to record drivers' hours of service under the provisions of § 395.1(e)(1) and (2).

(4) Motor carriers must install and require their drivers to use hours-of-service recording devices in accordance with this section in their commercial motor vehicles no later than [INSERT DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

Issued on: January 26, 2011.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2011–2093 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AX70

Fisheries of the Northeastern United States; Monkfish; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (NEFMC) has submitted Amendment 5 to the Monkfish Fishery Management Plan (FMP) (Amendment 5), incorporating a draft Environmental Assessment (EA) and an Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 5, which was developed by the New England and Mid-Atlantic Fishery Management Councils (Councils) to bring the Monkfish FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Public comments must be received on or before April 4, 2011.

ADDRESSES: A draft EA was prepared for Amendment 5 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the draft EA and the IRFA, are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–AX70, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison McHale.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Monkfish Amendment 5."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are 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.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

The Councils developed Amendment 5 with the primary goal of bringing the

Monkfish FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Act. The 2006 reauthorization of the Magnuson-Stevens Act contains several new requirements including the requirement that all fisheries adopt ACLs to prevent overfishing, and measures to ensure accountability.

Amendment 5 was also developed to bring the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines (74 FR 3178; January 16, 2009) which not only establish a process for setting ACLs and guidance for establishing AMs, but also provides updated guidelines for establishing reference points and control rules (*i.e.,* maximum sustainable yield (MSY), optimum yield (OY), overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs)) and clarifies the relationships among them. Amendment 5 would establish biological and management reference points to be consistent with NS1 guidelines utilizing recent scientific information from the 2007 Northeast Data Poor Stocks Working Group assessment.

In addition to establishing revised biological and management reference points, ACLs, and AMs for the monkfish fishery, Amendment 5 also proposes measures intended to promote efficiency and reduce waste in the monkfish fishery. First, a measure is being proposed that would minimize regulatory discards resulting from monkfish trip limit overages by allowing vessels to land an additional trip limit (one day's worth) and have their DAS usage for that trip adjusted to account for the overage. Second, a measure is being proposed that would allow the landing of monkfish heads separate from the body by adding a new conversion factor and authorized landing form to the FMP. Lastly, a measure is being proposed in Amendment 5 that would enable changes to be made to the Monkfish RSA Program through a framework adjustment versus an FMP amendment.

Public comments are being solicited on Amendment 5 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 5 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 5 to be considered in the approval/disapproval decision on the amendment. All comments received by April 4, 2011, whether specifically directed to Amendment 5 or the proposed rule for Amendment 5, will be considered in the approval/disapproval decision on Amendment 5. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 5. To be considered, comments must be received by close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–2200 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–BA11

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program) allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 37 would amend the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and the Program by establishing a process for eligible fishery participants to request that NMFS exempt holders of West-designated individual fishing quota (IFQ) and individual processor quota (IPQ) in the Western Aleutian Islands golden king crab fishery from the West regional delivery requirements. Federal regulations require West-designated golden king crab IFQ to be delivered to a processor in the West region of the Aleutian Islands with an exact amount of unused West-designated IPQ. However, processing capacity may not be available each season. Amendment 37 is necessary to prevent disruption to the Western Aleutian Islands golden king crab fishery, while providing for the sustained participation of municipalities in the region. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before April 4, 2011.

ADDRESSES: Send comments to James W. Balsiger, Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648–BA11", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 37, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis, the categorical exclusion prepared for this action, and the Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Analysis prepared for the Program may be obtained from the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-

Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 amended the FMP to include the Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

NMFS established the Program as a catch share program for nine crab fisheries in the BSAI. The Individual Fishing Quota (IFQ) portion of the Program assigned quota share (QS) to persons based on their historic participation in one or more of these nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive IFQ, which represents an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to receive for processing a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called IPQ. A portion of the QS issued yields IFQ that is required to be delivered to a processor with a like amount of unused IPQ. IFQ derived from CVO QS is subject to annual designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS for a fishery and region is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery and region.

In most crab fisheries, the Program established regional designations for QS and PQS to ensure that municipalities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries or to encourage the development of processing capacity in specific isolated municipalities. To accomplish this, the Program imposes regional delivery requirements to specific geographic regions based on historic geographic delivery and processing patterns.

The Western Aleutian Islands golden king crab (*Lithodes aequispinus*) (WAG) fishery is managed under the Program. Existing regulations require that 50 percent of the golden king crab harvested with catcher vessel Class A IFQ issued for this fishery be delivered to a processor located in the West region (west of 170° W. Long.) with West-designated IPQ. The purpose of these delivery requirements is to support the development of processing facilities in Adak and Akta, two isolated municipalities in the West region. The only shore-based processing facility capable of processing WAG in this region has been located in the City of Adak. In April 2009, the Adak facility closed and, in September 2009, the facility's owners officially filed for Chapter 11 bankruptcy. At this time, no processing facility capable of processing WAG crab is open in the West region, and none is likely to open in the near future, yet Federal regulations require that crab harvested with Class A IFQ be processed in the West region.

On February 18, 2010, NMFS published an emergency action to exempt West-designated IFQ and West-designated IPQ for the WAG fishery from the West regional designation until August 17, 2010 (75 FR 7205). NMFS extended the emergency action on August 17, 2010 (75 FR 50716), and the extension is in effect through February 20, 2011. Removing the West regional designation from this IFQ and IPQ has temporarily relaxed the requirements that these shares be used in the West region.

At its April 2010 meeting, the Council adopted Amendment 37 to the FMP to address the lack of processing capacity in the West region. Amendment 37 would establish a process for QS holders, PQS holders, and the cities of Adak and Atka to request that NMFS exempt the WAG fishery from the West regional delivery requirements. The Council and NMFS recognize that the regional delivery requirements would be untenable if processing capacity is not available in the region, potentially resulting in unutilized TAC. Amendment 37 would establish a means to enhance stability in the fishery, while continuing to promote the sustained participation of the municipalities intended to benefit from the West regional delivery requirements.

Amendment 37 would identify the QS holders, PQS holders, and municipalities who would be eligible to apply for an exemption from the West regional delivery requirements. The Council selected the following eligibility requirements for contract parties as necessary to request an exemption: (1) Any person or company that holds in excess of 20-percentof the West-designated WAG QS; (2) any person or company that holds in excess of 20-percentof the West-designated WAG PQS; and (3) the cities of Adak and Atka. If an exemption is granted by NMFS, the exemption would apply to all West-designated IFQ and IPQ holders for the remainder of the crab fishing year. Participants holding 20-percentor less of either share type would have no direct input into the contract negotiations or applications; however, the exemption would not obligate an IFQ or IPQ holder to deliver or process outside of the West region, but would provide that flexibility.

The Council considered several thresholds of QS and PQS ownership when considering eligibility criteria. The Council recommended a greater than 20-percentminimum participation threshold for eligibility because the inclusion of share holders with less economic incentive to harvest or process West-designated WAG could impede effective negotiations. Participants with less than or equal to 20-percentownership could withhold participation in an exemption to extract more favorable terms from larger entities with greater economic incentive to fully harvest and process the IFQ and IPQ. IFQ and IPQ holders that are substantially invested in the fishery are more likely to act quickly to ensure that TAC is fully utilized. By establishing the greater than 20-percent threshold, this proposed action is intended to provide a balance between efficiency and the participation of QS and PQS holders. Additionally, these eligibility criteria are intended to balance the interests of WAG fishery QS and PQS holders with the municipalities intended to benefit from the West regional delivery requirements.

Based on the analysis and public testimony, the Council adopted Amendment 37 in April 2010, and submitted Amendment 37 to NMFS for review by the Secretary. Amendment 37 would modify the FMP to allow eligible participants to submit an application to NMFS requesting an exemption from the West regional delivery requirements. The application would require the eligible parties to agree to a master contract and the completion of an application. Upon approval of a completed application, NMFS would post notice of an annual exemption from the WAG West regional delivery requirements at the NMFS Web site at *http://alaskafisheries.noaa.gov.* Such an exemption would enable all West-designated Class A IFQ and IPQ holders to deliver and receive WAG crab at processing facilities outside of the West region, thereby promoting the full utilization of the TAC when processing capacity is not available in the West region.

Public comments are being solicited on proposed Amendment 37 through the end of the comment period (*see* **DATES**). NMFS intends to publish a proposed rule in the **Federal Register** for public comment that would implement Amendment 37, following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment period on Amendment 37 to be considered in the approval/disapproval decision on Amendment 37. All comments received by the end of the comment period on Amendment 37, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 37. Comments received after the end of the public comment period for Amendment 37, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 26, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–2199 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 21
Tuesday, February 1, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

[Docket No.: 110121055–1055–01]

Public Availability of Department of Commerce FY 2010 Service Contract Inventory

AGENCY: Department of Commerce.

ACTION: Notice of Public Availability of FY 2010 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Commerce 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.* Department of Commerce has posted its inventory and a summary of the inventory on the Office of Acquisition Management homepage at the following link *http://oam.eas.commerce.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Virna Evans, Director for Acquisition Workforce and Policy Division at 202–482–4248 or *vevans@doc.gov.*

Dated: January 21, 2011.

Scott Quehl,

Assistant Secretary for Administration, Department of Commerce.

[FR Doc. 2011–2135 Filed 1–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of the initiation notice in the **Federal Register** and to make our decision regarding respondent selection within 21 days of publication of the initiation notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

Opportunity to Request a Review

Not later than the last day of February 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil:	
Stainless Steel Bar, A–351–825	2/1/10–1/31/11
Frozen Warmwater Shrimp, A–351–838	2/1/10–1/31/11
France: Uranium, A–427–818	2/1/10–1/31/11
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/10–1/31/11
Forged Stainless Steel Flanges, A–533–809	2/1/10–1/31/11
Frozen Warmwater Shrimp, A–533–840	2/1/10–1/31/11

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Stainless Steel Bar, A–533–810	2/1/10–1/31/11
Certain Preserved Mushrooms, A–533–813	2/1/10–1/31/11
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/10–1/31/11
Certain Preserved Mushrooms, A–560–802	2/1/10–1/31/11
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/10–1/31/11
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/10–1/31/11
Japan:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/10–1/31/11
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/10–1/31/11
Stainless Steel Bar, A–588–833	2/1/10–1/31/11
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/10–1/31/11
Philippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/10–1/31/11
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/10–1/31/11
Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/10–10/19/10
Taiwan: Forged Stainless Steel Flanges, A–583–821	2/1/10–1/31/11
Thailand: Frozen Warmwater Shrimp, A–549–822	2/1/10–1/31/11
The People's Republic of China:	
Axes/adzes, A–570–803	2/1/10–1/31/11
Bars/wedges, A–570–803	2/1/10–1/31/11
Certain Preserved Mushrooms, A–570–851	2/1/10–1/31/11
Frozen Warmwater Shrimp, A–570–893	2/1/10–1/31/11
Hammers/sledges, A–570–803	2/1/10–1/31/11
Natural Bristle Paint Brushes and Brush Heads, A–570–501	2/1/10–1/31/11
Picks/mattocks, A–570–803	2/1/10–1/31/11
Small Diameter Graphite Electrodes, A–570–929	2/1/10–1/31/11
Uncovered Innerspring Units, A–570–928	2/1/10–1/31/11
Socialist Republic of Vietnam: Frozen Warmwater Shrimp, A–552–802	2/1/10–1/31/11
.	
Countervailing Duty Proceedings	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/10–12/31/10
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/10–12/31/10
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/10–12/31/10
Certain Hot-Rolled Carbon Steel Flat Products,[2] C–560–813	1/1/10–12/31/10
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, C–475–827	1/1/10–12/31/10
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/10–12/31/10

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International

[2] In the notice of opportunity to request administrative reviews that published on December 1, 2010 (75 FR 74682) the Department listed the period of review for the case Certain Hot-Rolled Carbon Steel Flat Products from Indonesia (C–560–813) incorrectly. The correct period of review for this case is listed above.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3508 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of February 2011. If the Department does not receive, by the last day of February 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from use, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 26, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2196 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2011

The following Sunset Reviews are scheduled for initiation in March 2011 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Brass Sheet & Strip from France (A–427–602) (3rd Review)	David Goldberger, (202) 482–4136.
Brass Sheet & Strip from Germany (A–428–602) (3rd Review)	David Goldberger, (202) 482–4136.
Brass Sheet & Strip from Italy (A–475–601) (3rd Review)	David Goldberger, (202) 482–4136.
Brass Sheet & Strip from Japan (A–588–704) (3rd Review)	David Goldberger, (202) 482–4136.
Polyester Staple Fiber from South Korea (A–580–839) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Polyester Staple Fiber from Taiwan (A–583–833) (2nd Review)	Dana Mermelstein, (202) 482–1391.
.	
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders is scheduled for initiation in March 2011.	
Suspended Investigations	
Ammonium Nitrate from Russia (A–821–811) (2nd Review)	Sally Gannon, (202) 482–0162.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must

provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 21, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2195 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–841]

Polyvinyl Alcohol From Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that imports of polyvinyl alcohol (PVA) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Final Determination" section of this notice.

DATES: *Effective Date:* February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act or the Department's regulations, 19 CFR part 351, are to those provisions in effect on September 27, 2004, the date of initiation of this investigation.

Case History

On September 13, 2010, we published in the **Federal Register** our preliminary determination in the antidumping duty investigation of polyvinyl alcohol from Taiwan. See *Polyvinyl Alcohol From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 55552 (September 13, 2010) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the sole respondent, Chang Chun Petrochemical Co., Ltd. (CCPC). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by CCPC. See Memorandum to the File entitled "Polyvinyl Alcohol from Taiwan: Sales Verification of Chang Chun Petrochemical Co., Ltd.," dated October 12, 2010, and Memorandum to Neal M. Halper entitled "Verification of the Cost of Production and Constructed Value Data Submitted by Chang Chun Petrochemical Co., Ltd., in the Antidumping Duty Investigation of Polyvinyl Alcohol from Taiwan" dated October 26, 2010. All verification reports are on file and available in the Central Records Unit (CRU), Room 7046, of the main Department of Commerce building.

We received case briefs submitted by Sekisui Specialty Chemicals America, LLC (the petitioner), and CCPC on November 2, 2010. The petitioner and CCPC submitted rebuttal briefs on November 8, 2010. We held a public hearing on December 1, 2010.

Period of Investigation

The period of investigation is July 1, 2003, through June 30, 2004.[1] This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, September 2004. See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid. PVA in fiber form and PVB-grade low-ash PVA are not included in the scope of this investigation. PVB-grade low-ash PVA is defined to be PVA that meets the following specifications: Hydrolysis, Mole % of 98.40 +/− 0.40, 4% Solution Viscosity 30.00 +/− 2.50 centipois, and ash—ISE, wt% less than 0.60, 4% solution color 20mm cell, 10.0 maximum APHA units, haze index, 20mm cell, 5.0, maximum. The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Antidumping Investigation of Polyvinyl Alcohol from Taiwan" (Decision Memorandum) from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Acting Deputy Assistant Secretary for Import Administration, dated January 26, 2011, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at the verifications, we have made certain changes to the margin calculation for CCPC. For a discussion of these changes, see Memorandum to the File entitled "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyvinyl Alcohol from Taiwan—Analysis Memorandum for Chang Chun Petrochemical Co., Ltd.," dated January 26, 2011.

Cost of Production

As explained in the *Preliminary Determination* (75 FR at 55556), we conducted an investigation concerning sales at prices below the cost of production in the home market. We found that, for certain specific products, more than 20 percent of CCPC's home-market sales were at prices less than the cost of production and, in addition, such sales did not provide for the

[1] We initiated this investigation on September 27, 2004, but terminated it after the International Trade Commission's (ITC's) preliminary determination of no injury. We resumed this investigation after that determination was reversed upon remand. See *Preliminary Determination,* 75 FR at 55552, for full details of the history of this investigation.

recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act. Based on this test, for this final determination we have disregarded below-cost sales by CCPC.

Final Determination

The final antidumping duty margin is as follows:

Manufacturer/Exporter	Weighted-average margin (percent)
Chang Chun Petrochemical Co., Ltd.	3.08

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PVA from Taiwan which were entered, or withdrawn from warehouse, for consumption on or after September 13, 2010, the date of publication of the *Preliminary Determination.* Effective upon publication of the final determination, we will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins as follows: (1) The rate for CCPC will be 3.08 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 3.08 percent, as discussed in the "All-Others Rate" section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. CCPC is the only respondent in this investigation for which the Department has calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for CCPC, 3.08 percent. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (October 25, 2007)).

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 26, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Targeted Dumping
2. Product Characteristics
3. Date of Sale
4. Cost of Production

[FR Doc. 2011–2194 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty order listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order.

DATES: *Effective Date:* February 1, 2011.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC case No.	ITC case No.	Country	Product	Department contact
A–351–840	731–TA–1089	Brazil	Orange Juice	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: January 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2197 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2011–0001]

Grant of Interim Extension of the Term of U.S. Patent No. 4,971,802; MIFAMURTIDE

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a fourth one-year interim extension of the term of U.S. Patent No. 4,971,802.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo by telephone at (571) 272–7728; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at (571) 273–7728, or by e-mail to *Raul.Tamayo@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On September 30, 2010, IDM Pharma, agent/licensee of patent owner Novartis, timely filed an application under 35 U.S.C. 156(d)(5) for a fourth interim extension of the term of U.S. Patent No. 4,971,802. Claims of the patent cover muramyl tripeptide phosphatidyl ethanolamine, which is labeled as the active ingredient in the human drug product Mifamurtide. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mifamurtide has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (November 20, 2010), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

A fourth interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,971,802 was granted for a period of one year from the extended

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

expiration date of the patent, *i.e.,* until November 20, 2011.

Dated: January 26, 2011.

Robert W. Bahr,

Acting Associate Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2011–2088 Filed 1–31–11; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Stay of Enforcement of Testing and Certification Pertaining to Youth All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Stay of enforcement.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is announcing its decision to stay enforcement of the testing of youth all-terrain vehicles ("ATVs") by third party conformity assessment bodies, subject to conditions, until November 27, 2011.

DATES: This stay of enforcement is effective on February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leland, Project Manager, Directorate for Economic Analysis, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *eleland@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a)(3)(B)(vi) of the Consumer Product Safety Act ("CPSA"), as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110–314, directs the CPSC to establish and publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, 15 U.S.C. 2063(a)(3)(A), each manufacturer (including an importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the establishment and **Federal Register** publication of a notice of the requirements for accreditation tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Pursuant to section 14(a)(3)(F) of the CPSA, the Commission may extend the 90-day period by not more than 60 days if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule. Irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

In the **Federal Register** of August 27, 2010 (75 FR 52616), we published a notice of requirements that provided the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing of ATVs designed or intended primarily for children 12 years of age or younger. The notice of requirements stated that, for youth ATVs manufactured after November 26, 2010, the manufacturer "must issue a certificate of compliance with 16 CFR part 1420 based on" testing performed by a third party conformity assessment body (75 FR at 52618). The notice also asked for comments to be received by September 27, 2010.

In response to the notice of requirements, the Specialty Vehicle Institute of America ("SVIA") filed a comment that included a request that the Commission extend by 60 days the date by which manufacturers must begin testing and certification of youth ATVs. Among the reasons given for the extension, were the complexity of 16 CFR part 1420 and the fact that no third party conformity assessment bodies have been accredited by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA), a prerequisite for such conformity assessment bodies to be accepted by the CPSC.

On November 17, 2010, the SVIA filed a "Petition for Extension and Stay of Enforcement for Third Party Testing for Certain All-Terrain Vehicles." The petition requested a 60-day extension of the date by which manufacturers must begin testing and certification of youth ATVs, stating that no third party conformity assessment bodies have been accredited by the CPSC to test for conformity with 16 CFR part 1420. The SVIA concluded that it is unlikely that a sufficient number of accredited third party conformity assessment bodies will exist by the end of the requested 60-day extension. As a result, the SVIA also requested that the Commission consider additional forms of relief, such as a further stay of enforcement of these requirements for one year (to November 27, 2011).

In response, in the **Federal Register** of December 9, 2010 (75 FR 76708), the Consumer Product Safety Commission announced that we would extend the date of testing and certification of youth ATVs until January 25, 2011. We acknowledged that we were "not aware of any third party conformity assessment bodies that have the requisite accreditation by an ILAC–MRA signatory to test for conformity to 16 CFR part 1420" and so we were granting the request for a 60-day extension (75 FR at 76709). However, with respect to the SVIA's request for a one-year stay of enforcement, we decided to seek public comment and asked very specific questions:

(1) What efforts have been made by ATV manufacturers or others to obtain tests of youth ATVs by third party conformity assessment bodies and to encourage third party conformity assessment bodies to become accredited to do so?

(2) What is the status of the efforts of third party conformity assessment bodies to become accredited to test youth ATVs, and how long will it take to obtain such accreditation?

(3) What barriers currently exist to gaining accreditation that is specifically related to youth ATVs?

(4) How are ATV manufacturers currently demonstrating compliance with the ANSI/SVIA–1–2007 standard? What ATV manufacturers are currently doing in-house testing of their ATVs for conformance to the standard? What steps, if any, have these manufacturers taken to have their existing in-house testing facilities become accredited third party conformity assessment bodies?

(5) What third party testing facilities are capable of testing youth ATVs to the ANSI/SVIA–2007–1 standard?

II. Comments

We received more than 400 comments. Most comments were form letters that requested a stay of enforcement until November 27, 2011, because "the industry states that it will be unlikely enough labs will be online by the new January 25, 2011 deadline." Most form letters were submitted by consumers, some of whom are members of the American Motorcyclist Association ("AMA") and the All Terrain Vehicle Association ("ATVA"); the remaining form letters were submitted by rider associations, dealers,

raceways, and other private sector businesses.

Of the remaining comments, some requested that the stay be extended. Other comments addressed issues related to lead content issues, which are not addressed in this proceeding or addressed various topics, such as the family activity nature of ATV riding, government regulation, the CPSIA, or the role of parents to decide what is best for their child.

Only one comment expressed specific opposition to an extension of the January 25, 2011, date. No affiliation was provided. The commenter stated that it opposes any further extension of the date for compliance with the requirements for ATV manufacturers to use accredited third party laboratories because any further extension would remove the incentive to come into compliance.

Only one comment, from the SVIA, responded specifically to the five questions posed in the December 1, 2010 FR notice. The SVIA stated that it contacted 27 conformity assessment bodies worldwide. The SVIA states that "it appears unlikely that there will be a sufficient number of accredited third party conformity assessment bodies prepared to conduct conformity testing of youth ATVs by January 26, 2011 or anytime soon thereafter." Furthermore, the SVIA indicated that there is no information regarding "how long conformity assessment testing will take to complete" once a third party testing body is accredited and ready to conduct such testing. Therefore, the SVIA requested that the Commission grant a further stay of enforcement until November 27, 2011 and noted that, without a further stay of enforcement, youth ATVs will "cease to become available, or at least will be substantially less available."

III. The Conditional Stay

We recognize that there are still no accredited third party testing bodies for youth ATVs at this time. However, we believe that it is important to establish accountability in meeting the CPSIA third party testing requirement until there are accredited third party conformity assessment bodies that can perform tests to 16 CFR part 1420, *Requirements for All Terrain Vehicles.* Accordingly, CPSC staff will begin to conduct compliance testing of youth ATVs. If there is evidence of noncompliance with the requirements of the mandatory standard by the manufacturers that have action plans approved by the Commission, we will take appropriate enforcement actions. In addition, we will stay enforcement of the testing and certification requirements of 16 CFR part 1420 until November 27, 2011, upon the following conditions:

(1) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must submit a General Certificate of Conformity ("GCC") to the Commission demonstrating compliance with 16 CFR part 1420. Currently, in addition to complying with the certification label requirement of the ANSI/SVIA–1–2007 mandatory standard and the certification label requirement of section 42(a)(2)(B) of the CPSA, ATV companies that manufacture or distribute a youth model ATV are required to issue GCCs for youth ATVs containing all of the information required by section 14(g) of the CPSA. On March 3, 2011, ATV companies that manufacture or distribute youth model ATVs must also submit their GCCs for ATVs manufactured on or after March 3, 2011 to Mary Toro, Director, Regulatory Enforcement, Office of Compliance & Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *mtoro@cpsc.gov,* with subject line: "Youth ATV—GCC."

(2) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must submit any test reports supporting the company's GCCs to the Commission, if requested.

(3) An ATV company that manufactures or distributes a youth model ATV and has an approved action plan must provide a quarterly report, beginning on April 1, 2011, and again on July 1, 2011, and October 1, 2011, with responses to the following questions:

- What efforts has your company made to obtain tests of youth ATVs by third party conformity assessment bodies and to encourage third party conformity assessment bodies to become accredited to do so?
- What efforts have been made by the third party conformity assessment bodies that your company has contacted to become accredited to test youth ATVs? If these bodies are not yet accredited, how long will it take to obtain such accreditation?
- What barriers are preventing your company from obtaining third party certification?

The quarterly report should be submitted to Mary Toro, Director, Regulatory Enforcement, Office of Compliance & Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *mtoro@cpsc.gov,* with subject line: "Youth ATV—Quarterly Report."

Dated: January 25, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–2166 Filed 1–31–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for the Draft Programmatic Environmental Assessment for the Development and Operation of Small-Scale Wind Energy Projects at United States Marine Corps Facilities Throughout the United States

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code 4321), as implemented by the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500–1508), and Marine Corps NEPA directives (Marine Corps Order P5090.2A), the Department of the Navy announces the availability of, and invites public comments on the Draft Programmatic Environmental Assessment (Draft PEA) for the development and operation of small-scale wind energy projects at United States Marine Corps (USMC) facilities throughout the Continental United States (CONUS). A PEA evaluates a major action on a broad, programmatic basis. Thus, site-specific NEPA analysis may be tiered off this document as appropriate.

Dates and Addresses: The public comment period begins upon publication of a Notice of Availability (NOA) for the Draft PEA in the **Federal Register.** The comment period will last for 30 days thereafter.

The Draft PEA is available for electronic viewing at *http://marines.mil/unit/marforres/MFRHQ/FACILITIES/FACILITIES.aspx,* or by sending a request to Alain Flexer, USMC Marine Forces Reserves (MARFORRES), by telephone 504–678–8489, by fax 504–678–6823, by e-mail to *alain.flexer@usmc.mil* or by writing to: MARFORRES, Facilities, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, Louisiana 70146–5400.

Comments: All comments, written or submitted via the internet, are treated

equally, become part of the public record on the Draft PEA, and will be considered in the Final PEA. During the 30-day comment period, all written comments should be mailed to MARFORRES, Facilities, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, LA 70146–5400. Please submit all comments by the end of the 30-day comment period.

FOR FURTHER INFORMATION CONTACT: MARFORRES: Attn: Alain Flexer, telephone 504–678–8489 or by e-mail *alain.flexer@usmc.mil*.

SUPPLEMENTARY INFORMATION: MARFORRES (Energy Office) has completed a Draft PEA for the development and operation of small-scale wind energy projects at USMC CONUS facilities. The USMC has previously identified the subset of facilities at which wind is the most readily available and economically feasible renewable energy source and which may be included in their wind energy program, therefore, this Draft PEA does not consider other forms of renewable energy.

The purpose of the proposed action is to reduce dependency on fossil fuels and increase energy security and efficiency through development of small-scale wind energy projects at USMC CONUS facilities. The proposed action would enable MARFORRES to achieve specific goals regarding energy production and usage set by Executive Orders, legislative acts, and Federal agencies.

The Draft PEA evaluates the potential environmental impacts of constructing and operating small-scale wind energy facilities, with the number and sizes of turbines for each facility ranging from one to four and from 0.1 MW to 2.5 MW respectively. Under the No Action Alternative, the USMC would not pursue the development and operation of small-scale wind energy projects at USMC CONUS facilities.

Environmental resources addressed in the Draft PEA include land use; noise; geological resources; water resources; biological resources; cultural resources; visual resources; socioeconomics; air quality; utilities; airspace; health and safety; hazardous materials; and transportation. The Draft PEA also analyzes cumulative impacts from other past, present, and reasonably foreseeable future actions.

Schedule: NOA of the Draft PEA will be published in the **Federal Register.** This notice initiates the 30-day public comment period for the Draft PEA. If the Draft PEA determines a more thorough analysis is necessary, then the USMC will prepare an Environmental Impact Statement (EIS). If additional analysis is not necessary, the USMC will issue a Finding of No Significant Impact (FONSI). The USMC intends to issue the Final PEA no later than February 2011, at which time a NOA of the FONSI or Notice of Intent (NOI) to prepare an EIS will be published.

Dated: January 25, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–2160 Filed 1–31–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Service Contract Inventory for Fiscal Year (FY) 2010

AGENCY: Office of the Chief Financial Officer, U.S. Department of Education.

ACTION: Notice of availability—FY 2010 Service Contract Inventory.

SUMMARY: Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory on its Web site, at *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventory appendix/servicecontract inventory.html.* A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

FOR FURTHER INFORMATION CONTACT: Carolyn Dempster, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 by phone at 202–245–6068 or e-mail at *Carolyn.Dempster@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) by December 30, 2010. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public by posting the inventory on its agency homepage, (2) provide OFPP with the Web site address (URL) on which the inventory is being posted so that the inventory can be linked to a central OMB Web page, and (3) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and e-mail address of an agency point of contact.

Through this notice, the Department announces the availability of its inventory on the following Web site: *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventory appendix/servicecontract inventory.html.* The point of contact for the inventory is provided under the **FOR FURTHER INFORMATION CONTACT** section in this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, or audiotape) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Pub. L. 111–117.

Dated: January 28, 2011.

Thomas P. Skelly,

Chief Financial Officer.

[FR Doc. 2011–2236 Filed 1–28–11; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CD–005]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Miele, Inc. From the Department of Energy Residential Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of and publishes the Miele, Inc. (Miele) petition for waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to Miele's specified models of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants Miele an interim waiver from the DOE test procedures applicable to residential clothes dryers. DOE solicits comments, data, and information concerning Miele's petition.

DATES: DOE will accept comments, data, and information with respect to Miele's Petition until March 3, 2011.

ADDRESSES: You may submit comments, identified by case number CD–005, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. CD–005] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Petition for Waiver Case No. CD–005, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW. (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar clothes dryers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 ("EPCA"), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for "Consumer Products Other Than Automobiles," a program covering most major household appliances, which includes the clothes dryers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct (42 U.S.C. 6293(b)(3)). The test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2); 430.27(g). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure

On November 3, 2010, Miele filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D. Miele seeks a waiver from the applicable test procedures for its T8000 and T9000 product models because, Miele asserts, design characteristics of these models prevent testing according to the currently prescribed test procedures, as described in more detail in the following paragraph. DOE previously granted Miele a waiver from test procedures for two similar condenser clothes dryer models (T1565CA and T1570C). 60 FR 9330 (Feb. 17, 1995). DOE also granted waivers for the same type of clothes dryer to LG Electronics (73 FR 66641, Nov. 10, 2008), Whirlpool Corporation (74 FR 66334, Dec. 15, 2009) and General Electric (75 FR 13122, Mar. 18, 2010). Miele claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted itself and to other manufacturers be granted for Miele's T8000 and T9000 models.

In support of its petition, Miele claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. Miele plans to market a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums; the construction of these types of buildings does not permit the use of external venting.

The Miele Petition requests that DOE grant a waiver from existing test procedures to allow the sale of two models (T8000 and T9000) until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condenser clothes dryers. Similar to the other manufacturers, Miele did not include an alternate test procedure in its petition.

III. Application for Interim Waiver

Miele also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2) each application for interim waiver "shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver." An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE determined that Miele's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Miele might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that the Miele condensing clothes dryers have a feature that prevents testing them according to the existing DOE test procedure. In addition, as stated in the previous section, DOE has previously granted waivers to Miele for its T1565CA and T1570C models, LG, Whirlpool and GE for similar products.

For the reasons stated above, DOE grants Miele's application for interim waiver from testing of its condensing clothes dryer product line. Therefore, *it is ordered that:*

The application for interim waiver filed by Miele is hereby granted for Miele's T8000 and T9000 condensing clothes dryers. Miele shall not be required to test its T8000 and T9000 condensing clothes dryers on the basis of the test procedure under 10 CFR part 430 subpart B, appendix D.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. Miele may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Summary and Request for Comments

Through today's notice, DOE grants Miele an interim waiver from the specified portions of the test procedure applicable to Miele's T8000 and T9000 condensing clothes dryers and announces receipt of Miele's petition for waiver from those same portions of the test procedure. DOE publishes Miele's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Steve Polinski, Senior Manager for Regulatory Affairs, Miele, Inc., 9 Independence Way, Princeton, NJ 08540. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC on January 24, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

BILLING CODE 6450–01–P

November 3, 2010
The Honorable Catherine Zoi
Assistant Secretary, Energy Efficiency and Renewable Energy
U.S. Department of Energy
Mail Station EE-10
1000 Independence Avenue SW
Washington, D.C. 20585

RE: Petition for Waiver and Application for Interim Waiver under 10 CFR 430.27 for Clothes Dryer with Vent-Less Feature

Dear Assistant Secretary:

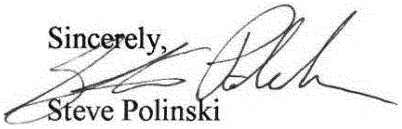
Miele Inc. respectfully submits this Petition for Waiver and Application for Interim Waiver pursuant to 10CFR430.27, to the U.S. Department of Energy, regarding the test procedure specified in 10 CFR 430 Appendix D to Subpart B of Part 430 – Uniform Test Method For Measuring The Energy Consumption of Clothes Dryers. Miele Inc. currently markets highly efficient vent-less condenser clothes dryers as granted by the Department of Energy on February 17, 1995 and found in the Federal Register 60 FR 9330.

Miele Inc. plans to introduce additional models of vent-less clothes dryers and is not aware of any alternative test procedure that would serve to evaluate the energy consumption for these models and hereby requests immediate relief by the granting of an Interim Waiver by the Department of Energy for Miele T8000 & T9000 Vent-Less Clothes Dryers. This request is justified because the Department of Energy has granted similar waivers in the past to Miele, General Electric, LG and Whirlpool for clothes dryers employing vent-less capability.

Miele Inc. respectfully requests that the Waiver Petition and Application for Interim Waiver as originally granted should continue until a time when the Test Procedure can be formally amended to include definitions and provision for proper inclusion of vent-less clothes dryers in existing standards.

Miele certifies that all manufacturers of domestically marketed clothes dryers have been notified by letter of this petition and application. Copies of this letter and certification are attached.

Sincerely,



Steve Polinski

Senior Manager for Regulatory Affairs

Miele Inc.

[FR Doc. 2011–2158 Filed 1–31–11; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 20, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1710–000.

Applicants: Arkansas Oklahoma Gas Corporation.

Description: Request of Arkansas Oklahoma Gas Corporation for Waiver of Regulation.

Filed Date: 01/14/2011.

Accession Number: 20110114–5251.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 26, 2011.

Docket Numbers: RP11–1711–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.501: 2010 Cashout Filing to be effective N/A.

Filed Date: 01/18/2011.

Accession Number: 20110118–5193.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: RP11–1712–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Backhaul Tariff Filing to be effective 2/17/2011.

Filed Date: 01/18/2011.

Accession Number: 20110118–5202.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: RP11–1713–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: FT, ESS FOS—Credit Provisions from PA to be effective 2/18/2011.

Filed Date: 01/18/2011.

Accession Number: 20110118–5256.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 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.

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. 2011–2095 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 20, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1321–001.

Applicants: Freebird Gas Storage, L.L.C.

Description: Freebird Gas Storage, L.L.C. submits tariff filing per 154.203: Freebird Gas Storage Baseline Tariff to be effective 9/21/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5000.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: RP10–1324–001.

Applicants: Arlington Storage Company, LLC.

Description: Arlington Storage Company, LLC submits tariff filing per 154.203: ASC Baseline Compliance Filing, to be effective 1/19/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5103.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: RP10–1369–001.

Applicants: Guardian Pipeline, L.L.C.

Description: Guardian Pipeline, L.L.C. submits tariff filing per 154.203: Guardian Agreement Baseline Compliance to be effective 10/1/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5039.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 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. 2011–2098 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 20, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–47–000.

Applicants: Mountain View Power Partners IV, LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of Mountain View Power Partners IV, LLC.

Filed Date: 01/20/2011.

Accession Number: 20110120–5059.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2302–002.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: PNM MBR Compliance Filing to be effective 8/24/2010.

Filed Date: 01/10/2011.

Accession Number: 20110110–5003.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER10–2345–003.

Applicants: Woodland Pulp LLC.

Description: Woodland Pulp LLC submits tariff filing per 35: Market-Based Rate Tariff Compliance Filing to be effective 9/23/2010.

Filed Date: 01/10/2011.

Accession Number: 20110110–5001.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2708–000.

Applicants: Geodyne Energy, LLC.

Description: Geodyne Energy, LLC submits tariff filing per 35.1: Geodyne Energy, LLC Baseline Filing to be effective 1/19/2011.

Filed Date: 01/19/2011.

Accession Number: 20110119–5144.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: ER11–2709–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Notice of Termination of two service agreements between PJM, US Departments of Energy, *et al.*

Filed Date: 01/19/2011.

Accession Number: 20110120–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: ER11–2710–000.

Applicants: La Paloma Generating Company, LLC.

Description: La Paloma Generating Company, LLC submits tariff filing per 35: Compliance Filing to be effective 9/30/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5036.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2711–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2152 Rio Blanco Wind Farm, LLC GIA to be effective 1/5/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5064.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2712–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2720, Queue V4–001, Flemington Solar, LLC and JCPL to be effective 1/13/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5066.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2713–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits tariff filing per 35.13(a)(2)(iii: Bemidji-Grand Rapids Transmission Project Operation and Maintenance Agreement to be effective 12/1/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5087.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2714–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits tariff filing per 35.13(a)(2)(iii: Bemidji-Grand Rapids Transmission Project Construction Management Agreement to be effective 12/1/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5105.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2152 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 21, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1522–007; ER02–723–006; ER04–359–005; ER06–796–005; ER07–553–004; ER07–554–

004; ER07–555–004; ER07–556–004; ER07–557–004.

Applicants: Emera Energy Services Inc., Emera Energy Services Subsidiary No. 1 LLC, Emera Energy Services Subsidiary No. 2 LLC, Emera Energy Services Subsidiary No. 3 LLC, Emera Energy Services Subsidiary No. 4 LLC, Emera Energy Services Subsidiary No. 5 LLC, Emera Energy U.S. Subsidiary No. 1, Inc., Emera Energy U.S. Subsidiary No. 2, Inc., Bangor Hydro Electric Company, Emera Energy Services Subsidiary No. 3 LLC.

Description: Change in Status Report of the Emera Entities.

Filed Date: 01/20/2011.

Accession Number: 20110120–5186.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER00–586–009.

Applicants: Madison Gas and Electric Company.

Description: Notification of Change in Facts under Market-Based Rate Authority.

Filed Date: 01/20/2011.

Accession Number: 20110120–5182.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER10–3124–001; ER10–3127–001; ER10–3129–001; ER10–3130–001; ER10–3132–001; ER10–3134–001; ER10–3135–001; ER10–3137–001.

Applicants: Noble Wethersfield Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Bellmont Windpark, LLC, Noble Ellenburg Windpark, LLC, Noble Bliss Windpark, LLC, Noble Clinton Windpark I, LLC, Noble Altona Windpark, LLC, Noble Great Plains Windpark, LLC.

Description: Notice of Non-Material Change in Status of Noble Altona Windpark, LLC.

Filed Date: 01/21/2011.

Accession Number: 20110121–5020.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2128–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–12–03 CAISO's Convergence Bidding Compliance Filing Errata to be effective 2/1/2011.

Filed Date: 12/03/2010.

Accession Number: 20101203–5187.

Comment Date: 5 p.m. Eastern Time on Thursday, January 27, 2011.

Docket Numbers: ER11–2715–000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.13(a)(2)(iii): IPL O & T Agreement with ITCM and CIPCO to be effective 3/21/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5144.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2716–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): NorthWestern (MT) Service Agreement No. 576–LGIA with WKN Montana II, LLC to be effective 12/29/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5155.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2717–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Grand Gulf Nuclear Station LGIA to be effective 3/20/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5160.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2718–000.

Applicants: Dow Pipeline Company.

Description: Dow Pipeline Company submits tariff filing per 35: MBR Tariff Compliance Filing to be effective 10/18/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5022.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2719–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2141 Buffalo Point Wind LLC GIA to be effective 12/22/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5045.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2720–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–01–21 CAISO's Convergence Bidding Amendment to Section 11.8.6.6 to be effective 2/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, January 27, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA11–4–000.

Applicants: Willmar Municipal Utilities.

Description: Petition of Willmar Municipal Utilities for Waiver of Standards of Conduct and Oasis Reciprocity Conditions.

Filed Date: 01/20/2011.

Accession Number: 20110120–5185.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2151 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 24, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4109–007; ER03–175–011; ER03–427–009; ER05–440–005; ER99–3426–013.

Applicants: El Dorado Energy, LLC; Termoelectrica U.S., LLC; Mesquite Power, LLC; Sempra Generation; San Diego Gas & Electric Company.

Description: Notice of Category 1 Status for Northwest Region, *et. al.*

Filed Date: 01/21/2011.

Accession Number: 20110121–5131.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–1730–001; ER10–1731–001.

Applicants: Great Bay Energy, LLC, Great Bay Energy I, LLC.

Description: Notice of Non-Material Change In Status for Great Bay Energy, LLC and Great Bay Energy I, LLC.

Filed Date: 01/21/2011.

Accession Number: 20110121–5081.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–1862–001; ER10–1864–001; ER10–1865–001; ER10–1873–001; ER10–1875–001; ER10–1876–001; ER10–1878–001; ER10–1883–001; ER10–1884–001; ER10–1885–001; ER10–1888–001; ER10–1938–001; ER10–1941–001; ER10–1942–001; ER10–1947–001; ER10–2042–001.

Applicants: Calpine Energy Services, L.P., South Point Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America—CA, LLC, Pastoria Energy Center, LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Creed Energy Center, LLC, Calpine Gilroy Cogen, L.P., Power Contract Financing, L.L.C., Calpine Construction Finance Co., L.P.

Description: Second Supplemental to Updated Market Power Analysis—Calpine Energy Services, L.P.

Filed Date: 01/21/2011.

Accession Number: 20110121–5132.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–2571–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits tariff filing per 35: Coordination Sales Tariff Compliance Filing to be effective 9/9/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5000.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER10–2572–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits tariff filing per 35: Tariff for Sales of Ancillary Services Compliance Filing to be effective 9/9/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5115.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–3007–002.

Applicants: Moraine Wind II LLC.

Description: Moraine Wind II LLC submits tariff filing per 35: Compliance Filing of Revised Record Version of Tariff to be effective 9/27/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5028.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–3009–002.

Applicants: Pebble Springs Wind LLC.

Description: Pebble Springs Wind LLC submits tariff filing per 35: Compliance Filing of Revised Record to be effective 9/27/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5197.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–22–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: H075 Compliance to be effective 10/5/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5097.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2196–002.

Applicants: San Luis Solar LLC.

Description: San Luis Solar LLC submits tariff filing per 35: Compliance Filing to Initial MBR Tariff to be effective 1/28/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5131.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2335–002.

Applicants: Plum Point Services Company, LLC.

Description: Plum Point Services Company, LLC submits tariff filing per 35.17(b): Plum Point Services FERC Electric Tariff No. 1 to be effective 12/10/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5192.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2337–001.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits tariff filing per 35.17(b): Amendment to Revisions to Transmission Capacity Exchange Agreement to be effective 12/1/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5097.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2399–001.

Applicants: Eurus Combine Hills I LLC.

Description: Eurus Combine Hills I LLC submits tariff filing per 35: Revised Compliance Filing to be effective 12/18/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5080.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2700–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): 01–21–11 CMMPA Amendment to be effective 7/28/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5113.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2721–000.

Applicants: Ameren Services Company.

Description: Notice of Cancellation of Service Agreements for Wholesale Distribution Service of Ameren Services Company.

Filed Date: 01/21/2011.

Accession Number: 20110121–5082.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2722–000.

Applicants: Schuylkill Energy Resources, Inc.

Description: Schuylkill Energy Resources, Inc. submits tariff filing per 35.12: Initial Baseline Tariff to be effective 1/21/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5111.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2723–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Noble Americas Energy Solutions NITSA to be effective 1/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5112.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2724–000.

Applicants: Black Hills Colorado IPP, LLC.

Description: Black Hills Colorado IPP, LLC submits tariff filing per 35.12: MBR Application of Black Hills Colorado IPP, LLC to be effective 6/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5114.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2725–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1605R1 Elk City Wind II, LLC GIA to be effective 12/22/2010.

Filed Date: 01/21/2011.

Accession Number: 20110121–5116.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2726–000.

Applicants: Black Hills Colorado IPP, LLC.

Description: Black Hills Colorado IPP, LLC submits tariff filing per 35.12: Power Purchase Agreement with BH Colorado Electric to be effective 6/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5117.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER11–2727–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.12: Service Agreement No. 362 SPS 39MW Conditional Firm to be effective 6/1/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5001.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2728–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): CCSF IA—Addition of Historic Tariff Content to be effective 1/24/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5005.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2729–000.

Applicants: Massachusetts Electric Company, The Narragansett Electric Company.

Description: Massachusetts Electric Company, *et al.* Request for Limited Waiver and Expedited Consideration.

Filed Date: 01/21/2011.

Accession Number: 20110121–5129.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2730–000.

Applicants: Energy Exchange International, LLC.

Description: Energy Exchange International, LLC submits tariff filing per 35.12: Energy Exchange International, LLC Electric Tariff Original Volume No 1 to be effective 3/1/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5072.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2731–000.

Applicants: Heritage Stoney Corners Wind Farm I, LLC.

Description: Heritage Stoney Corners Wind Farm I, LLC submits tariff filing per 35.12: Market-Based Rate Initial Tariff Baseline to be effective 1/24/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5076.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2732–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii): Revision to SDG&E FERC Electric Tariff to be effective 1/21/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5153.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2733–000.

Applicants: Avista Corporation..

Description: Avista Corporation submits tariff filing per 35.12: Parallel Operating and Construction Agreement to be effective 1/25/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5168.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2734–000.

Applicants: Plum Point Energy Associates, LLC.

Description: Plum Point Energy Associates, LLC submits tariff filing per 35: Plum Point Energy MBR Tariff to be effective 3/24/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5198.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 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.

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. 2011–2150 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 25, 2011.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–38–000.

Applicants: La Paloma Generating Company, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Approval of La Paloma Generating Company, LLC.

Filed Date: 01/25/2011.

Accession Number: 20110125–5174.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–48–000.

Applicants: Cedar Point Wind, LLC.

Description: Notice of Self-Certification as an EWG of Cedar Point Wind, LLC.

Filed Date: 01/25/2011.

Accession Number: 20110125–5189.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–116–002.

Applicants: Trans Bay Cable LLC.

Description: Trans Bay Cable LLC submits its 10/23/09 filing to update its Cost of Service Rate pursuant to the 12/17/09 Order.

Filed Date: 01/21/2011.

Accession Number: 20110124–0002.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–2029–003; ER10–2036–001; ER10–2037–001; ER10–2039–001; ER10–2040–001; ER10–2041–001; ER10–2042–003; ER10–2043–001; ER10–2044–001; ER10–2051–001.

Applicants: Calpine Energy Services, L.P., Calpine Newark, LLC, Zion Energy LLC, Calpine Philadelphia Inc., Calpine Mid-Atlantic Marketing, LLC, Calpine Bethlehem, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC.

Description: Notification of Change in Status of Calpine Bethlehem, LLC, *et al.*

Filed Date: 01/24/2011.

Accession Number: 20110124–5246.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER10–2738–001.

Applicants: The Empire District Electric Company.

Description: Notice of Change in Status of The Empire District Electric Company.

Filed Date: 01/24/2011.

Accession Number: 20110124–5243.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER10–1362–001.

Applicants: Hatchet Ridge Wind, LLC.

Description: Amendment to Notice of Changes in Facts of Hatchet Ridge Wind, LLC.

Filed Date: 01/24/2011.

Accession Number: 20110124–5237.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–22–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: H075 Errata to Compliance to be effective 10/5/2010.

Filed Date: 01/25/2011.

Accession Number: 20110125–5044.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2705–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–01–20 CAISO Errata to RTPP Compliance Filing to be effective 12/20/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5164.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2735–000.

Applicants: Censtar Energy Corp.

Description: Censtar Energy Corp. submits tariff filing per 35.12: Market-Based Rate Initial Tariff Baseline to be effective 3/28/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5210.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2736–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Operational Constraint Violation Relaxation Limit Revisions to be effective 3/25/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5220.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2737–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2011_1_24_293-PSCo_CGTRX_ Alamosa Solar E&P Agrmt to be effective 12/1/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5223.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: ER11–2738–000.

Applicants: Duke Energy Ohio, Inc., Midwest Independent Transmission System.

Description: Duke Energy Ohio, Inc. submits tariff filing per 35.13(a)(2)(iii): DEO–AEP WDS Agreements x3 to be effective 1/1/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5043.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2739–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Filing to Correct Tariff Record Language to be effective 8/30/2010.

Filed Date: 01/25/2011.

Accession Number: 20110125–5160.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2740–000.

Applicants: Windy Flats Partners, LLC.

Description: Windy Flats Partners, LLC submits tariff filing per 35.1: Market-Based Rate Baseline Filing to be effective 1/25/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5161.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2741–000.

Applicants: CPV Batesville, LLC.

Description: CPV Batesville, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 2/1/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5184.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2742–000.

Applicants: GenOn West, LP.

Description: GenOn West, LP submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to be effective 1/1/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5220.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2743–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2715, Queue No. V4–077, Sustainable Energy Holding, LLC & Penelec to be effective 12/29/2010.

Filed Date: 01/25/2011.

Accession Number: 20110125–5238.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2744–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2011–1–25_IBDRA_San Luis Solar E&P Agmt to be effective 1/26/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5250.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2745–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2714, Queue No. W2–056, Earl F. Stahl Jr. and PSE&G to be effective 12/20/2010.

Filed Date: 01/25/2011.

Accession Number: 20110125–5273.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2746–000.

Applicants: GenOn Potrero, LLC.

Description: GenOn Potrero, LLC submits tariff filing per 35.15: Notice of Termination of RMR Agreement to be effective 2/28/2011.

Filed Date: 01/25/2011.

Accession Number: 20110125–5312.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: ER11–2747–000.

Applicants: ISO New England Inc.

Description: Resource Termination Filing (United Illuminating).

Filed Date: 01/25/2011.

Accession Number: 20110125–5325.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–4–000.

Applicants: Astoria Generating, L.P.; Boston Generating, LLC; Fore River Development, LLC, Mystic I, LLC; Mystic Development.

Description: Quarterly Land Acquisition Form of Astoria Generating Company, L.P., *et al.*

Filed Date: 01/25/2011.

Accession Number: 20110125–5357.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD11–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed New Interconnection Reliability Operations and Coordination Reliability Standards, Glossary Term and Implementation Plan.

Filed Date: 01/13/2011.

Accession Number: 20110113–5138.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 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.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2149 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

January 25, 2011.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings, Hyatt Regency Phoenix, 122 N Second St., Phoenix, Arizona 85004.

February 16 (1 p.m.–5 p.m.) and 17 (8 a.m.–1 p.m.), 2011.

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–4, North American Electric Reliability Corporation

Docket No. RC08–5, North American Electric Reliability Corporation

Docket No. RC11–1, North American Electric Reliability Corporation

Docket No. RC11–2, North American Electric Reliability Corporation

Docket No. RR08–4, North American Electric Reliability Corporation

Docket No. RR09–6, North American Electric Reliability Corporation

Docket No. RR10–1, North American Electric Reliability Corporation

Docket No. RR10–11, North American Electric Reliability Corporation

Docket No. RR10–12, North American Electric Reliability Corporation
Docket No. RR10–13, North American Electric Reliability Corporation
Docket No. RD09–11, North American Electric Reliability Corporation
Docket No. RD10–2, North American Electric Reliability Corporation
Docket No. RD10–4, North American Electric Reliability Corporation
Docket No. RD10–6, North American Electric Reliability Corporation
Docket No. RD10–8, North American Electric Reliability Corporation
Docket No. RD10–10, North American Electric Reliability Corporation
Docket No. RD10–11, North American Electric Reliability Corporation
Docket No. RD10–12, North American Electric Reliability Corporation
Docket No. RD10–14, North American Electric Reliability Corporation
Docket No. RD11–2, North American Electric Reliability Corporation
Docket No. NP10–160, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2140 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–50–000]

PetroLogistics Natural Gas Storage Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Choctaw Hub Expansion Project and Request for Comments on Environmental Issues

January 25, 2011.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment that will discuss the environmental impacts of the Choctaw Hub Expansion Project involving construction and operation of facilities by PetroLogistics Natural Gas Storage Company, LLC (PetroLogistics) in Iberville Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on February 24, 2011.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice PetroLogistics provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

PetroLogistics proposes to construct the Choctaw Hub Expansion Project facilities consisting of two converted salt dome caverns and new pipeline, compression and meter station interconnect facilities. These facilities would be constructed in or adjacent to PetroLogistics' existing natural gas storage and pipeline facilities located 4 miles northwest of the City of Plaquemine in Iberville Parish, Louisiana. PetroLogistics would operate these high-deliverability, multi-cycle natural gas storage facilities in order to increase the total working capacity of the Choctaw Hub from 16 billion cubic feet (bcf) to 33.9 bcf. According to PetroLogistics, this project would increase PetroLogistics' ability to provide firm and interruptible storage and hub services in the Gulf Coast region.

The Choctaw Hub Expansion Project would consist of the following facilities:

- Conversion, into gas storage caverns, of existing Cavern No. 28, currently used for commercial brine service and existing Cavern No. 102, currently used for liquid-ethylene storage service;
- 13-mile-long 30-inch-diameter Expansion Header Pipeline looping PetroLogistics' existing pipelines; [1]
- two compressor units totaling 27,000 horsepower at the existing PetroLogistics Compressor Station;
- 0.67-mile-long 30-inch-diameter cavern injection/withdrawal pipeline (30–Inch Compressor Station Pipeline) from the proposed Compressor Station Expansion to Cavern 28;
- 0.66-mile-long 16-inch-diameter cavern injection/withdrawal pipeline extending from the 30–Inch Compressor Station pipeline at Cavern 28 to the well head at Cavern 10;
- 300-foot-long 10-inch-diameter cavern injection/withdrawal pipeline extending from the 30–Inch Compressor Station pipeline to the existing certificated Cavern 24;
- 0.90-mile-long 20-inch-diameter pipeline and expansion of the Texas Eastern Transmission Company Meter Station Interconnect;
- 0.23 acre expansion of the meter station interconnect to Bridgeline Pipeline Company;
- 0.23 acre expansion of the meter station interconnect to Southern Natural Gas Company;
- meter station interconnects to Florida Gas Transmission Company, LLC and CrossTex LIG Pipeline Company;
- side valves on the Expansion Header Pipeline for future lateral interconnects; and
- 5.5 acre non-jurisdictional electrical substation and 1,460 feet of overhead conductor lines to increase the existing electrical service lines to 69 kilovolt amperes supply capability.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require disturbance of 131 acres of land. This total would include 65 acres under existing permanent easement right-of-way, 17 acres to be added as new permanent easement (and ownership of aboveground facilities), and 49 acres as temporary construction

[1] A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

right-of-way that would be restored to previous land use following construction. PetroLogistics would use a 75-foot-wide construction right-of-way with a 10 to 40-foot temporary right-of-way width for the installed pipeline. About 45 percent of the proposed pipelines would parallel existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils,
- Water resources,
- Wetlands and fisheries,
- Vegetation and wildlife, including migratory birds,
- Threatened and endangered species,
- Land use,
- Cultural resources,
- Air quality and noise,
- Reliability and safety, and
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

[3] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before February 24, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–050–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–50). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the

texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2139 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–002]

Eagle Crest Energy Company; Notice of Applicant-Proposed Water Pipeline Route for the Proposed Eagle Mountain Pumped Storage Hydroelectric Project and Notice of Public Meetings

January 21, 2011.

On June 22, 2009, Eagle Crest Energy Company (Eagle Crest or applicant) filed an application for an original license with the Federal Energy Regulatory Commission (Commission or FERC) for the proposed Eagle Mountain Pumped Storage Hydroelectric Project (Eagle Mountain Project). This notice describes the water supply pipeline route proposed by the applicant and recommended by staff that is identified in the Commission's draft environmental impact statement (draft EIS). This notice and copies of the draft EIS are being sent to landowners of property that would be crossed by the proposed water supply pipeline. We are currently soliciting comments on the proposed water supply pipeline and the draft EIS. Additionally, as discussed below, we will be hosting two public meetings on February 3, 2011, to discuss the proposed water supply pipeline as well as our other recommendations in the draft EIS.

The proposed Eagle Mountain Project would be located at the inactive Eagle Mountain mine in Riverside County, California, near the town of Desert Center and would consist of: (1) An upper and lower reservoir with surface areas of 191 and 163 acres, respectively; (2) an underground powerhouse with four reversible pump-turbine units each rated at 325 megawatts (MW) for a total generating capacity of 1,300 MW; (3) a 13.5-mile-long transmission line; and (4) groundwater supply facilities including an underground water supply pipeline.

Eagle Crest's proposed water supply wells are about 3 miles northeast of the town of Desert Center. The proposed feeder water lines leading from the location of the wells to the main pipeline would cross several privately owned parcels. The proposed main water supply pipeline would then extend northwest within the right-of-way for the existing 160-kilovolt Southern California Edison transmission line to the intersection with Kaiser Road. After the intersection with Kaiser Road, the proposed water supply pipeline would remain within the Kaiser Road right-of-way to the proposed lower reservoir.

Additional information about the proposed project is available on the FERC Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number (P–13123) to access the public record. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

All comments must be filed by Monday, February 28, 2011, and should reference Project No. 13123–002. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "eComment" under the "Documents and Filings" tab. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the transmission line routes and the draft EIS. The time and location of the meetings are as follows:

Daytime Meeting:

Date: February 3, 2011.

Time: 1 p.m.

Place: University of California at Riverside, Palm Desert Graduate Center.

Address: 75–080 Frank Sinatra Drive, Room B114/117, Palm Desert, California 92211.

Evening Meeting:

Date: February 3, 2011.

Time: 7 p.m.–10 p.m.

Place: University of California at Riverside, Palm Desert Graduate Center.

Address: 75–080 Frank Sinatra Drive, Room B200, Palm Desert, California 92211.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, please contact Kenneth Hogan at (202) 502–8434 or at *kenneth.hogan@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2145 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2724–000]

Black Hills Colorado IPP, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 25, 2011.

This is a supplemental notice in the above-referenced proceeding Black Hills Colorado IPP, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 14, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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. 2011–2148 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2684–000]

Palmco Power NY, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 20, 2011.

This is a supplemental notice in the above-referenced proceeding of Palmco Power NY, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 9, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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. 2011–2096 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2701–000]

Mountain View Power Partners IV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 20, 2011.

This is a supplemental notice in the above-referenced proceeding Mountain View Power Partners IV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 9, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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. 2011–2097 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13305–001]

Whitestone Power and Communications; Notice of Intent To File License Application, Filing of Draft Application, Request for Waivers of Integrated Licensing Process Regulations Necessary for Expedited Processing of a Hydrokinetic Pilot Project License Application, and Soliciting Comments

January 21, 2011.

a. *Type of Filing:* Notice of Intent To File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 13305–001.

c. *Date Filed:* January 18, 2011.

d. *Submitted By:* Whitestone Power and Communications.

e. *Name of Project:* Whitestone Poncelet RISEC Project.[1]

f. *Location:* On the Tanana River within the Unorganized Borough, near Delta Junction, Alaska.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Steven M. Selvaggio, Whitestone Power and Communications, P.O. Box 1630, Delta Junction, Alaska 99737; (907) 895–4938.

i. *FERC Contact:* Dianne Rodman (202) 502–6077.

j. Whitestone Power and Communications (Whitestone) has filed with the Commission: (1) A notice of intent (NOI) to file an application for an original license for a hydrokinetic pilot project and a draft license with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-Federal representative for section 7 of the Endangered Species Act consultation; and (5) a request to be designated as the non-Federal representative for section 106 consultation under the National Historic Preservation Act (collectively the pre-filing materials).

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should be sent to the address above in paragraph h. In addition, all comments must be filed with the Commission. Documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Whitestone Poncelet RISEC Project) and number (P–13305–001), and bear the heading "Comments on the proposed Whitestone Poncelet RISEC Project" Any individual or entity interested in submitting comments on the pre-filing materials must do so by March 21, 2011.

l. With this notice, we are approving Whitestone's request to be designated as the non-Federal representative for section 7 of the Endangered Species Act (ESA) and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) The U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required by section 7 of ESA; and (b) the Alaska State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. This notice does not constitute the Commission's approval of Whitestone's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

n. The proposed Whitestone Poncelet RISEC Project would consist of: (1) A 12-foot-wide, 16-foot-diameter Poncelet undershot water wheel; (2) a 34-foot-long, 19- to 24.5-foot-wide, aluminum-frame floatation platform mounted on a 34-foot-long, 3.5-foot-diameter high-density-polyethylene (HDPE) pontoon and a 34-foot-long, 3-foot-diameter HDPE pontoon; (3) a 100-kilowatt turbine/generator unit; (4) a 33-foot-long, 3.5-foot-wide gangway from the shore to the floating pontoon; (5) anchoring and transmission cables from the floatation platform to the shore; and (6) appurtenant facilities. The project is anticipated to operate from April until October, with an estimated annual generation of 200 megawatt-hours.

o. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659.

p. Pre-filing process schedule. The pre-filing process will be conducted pursuant to the following tentative schedule. Revisions to the schedule below may be made based on staff's review of the draft application and any comments received.

Milestone	Date
Comments on pre-filing materials due	March 21, 2011.
Issuance of meeting notice (if needed)	April 5, 2011.
Public meeting/technical conference (if needed)	May 5, 2011.

[1] The project was named the Microturbine Hydrokinetic River-In-Stream Energy Conversion Power Project in the preliminary permit for Project No. 13305.

Milestone	Date
Issuance of notice concluding pre-filing process and ILP waiver request determination	April 20, 2011 (if no meeting is needed). May 20, 2011 (if meeting is needed).

q. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2146 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–13403–001, P–13404–001, P–13405–001, P–13406–001, P–13407–001, P–13408–001, P–13410–001, P–13411–001, and P–13412–001]

Clear River Power, et al.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

January 25, 2011.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 13403–001, 13404–001, 13405–001, 13406–001, 13407–001, 13408–001, 13410–001, 13411–001, and 13412–001

c. *Dated Filed:* December 1, 2010

d. *Submitted By:* Clear River Power, *et al.* (Clear River Power), subsidiaries of Free Flow Power Corporation

e. *Name of Projects:* Luke Chute Lock and Dam Project, P–13403–001; Beverly Lock and Dam Project, P–13404–001; Devola Lock and Dam Project, P–13405–001; Malta/McConnelsville Lock and Dam Project, P–13406–001; Lowell Lock and Dam Project, P–13407–001; Philo Lock and Dam Project, P–13408–001; Ellis Lock and Dam Project, P–13410–001; Rokeby Lock and Dam Project, P–13411–001; and Zanesville Lock and Dam Project, P–13412–001

f. *Location:* At existing locks and dams formally owned and operated by the U.S. Army Corps of Engineers but now owned and operated by the state of Ohio on the Muskingum River in Washington, Morgan, and Muskingum counties, Ohio. (See table below for specific project locations)

Project No.	Projects	County(s)	City/town
P–13403	Luke Chute Lock and Dam	Washington Morgan	between the cities of Stockport and Beckett.
P–13404	Beverly Lock and Dam	Washington	upstream of the city of Beverly.
P–13405	Devola Lock and Dam	Washington	near the city of Devola.
P–13406	Malta/McConnelsville Lock and Dam	Morgan	southern shore of the town of McConnelsville.
P–13407	Lowell Lock and Dam	Washington	west of the city of Lowell.
P–13408	Philo Lock and Dam	Muskingum	north of the city of Philo.
P–13410	Ellis Lock and Dam	Muskingum	east of town of Ellis.
P–13411	Rokeby Lock and Dam	Morgan	near the city of Rokeby.
P–13412	Zanesville Lock and Dam	Muskingum	near the center of the city of Zanesville.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 808(b)(1) and 18 CFR 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, Chief Operating Officer, Free Flow Power, 33 Commercial Street, Gloucester, MA 01930; or at (978) 252–7361.

i. *FERC Contact:* Joseph Adamson at (202) 502–8085; or e-mail at *joseph.adamson@ferc.gov*.

j. On December 1, 2010, the Clear River Power, filed its request to use the Traditional Licensing Process and provided public notice of its request. In a letter dated January 21, 2011, the Director, Division of Hydropower Licensing, approved the Clear River Power's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Ohio State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Clear River Power as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Clear River Power filed a Pre-Application Document (PAD), including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.5 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-

mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2141 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13944–000]

Valley Affordable Housing Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 21, 2011.

On December 10, 2010, the Valley Affordable Housing Corporation 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 Manville Hydroelectric Project to be located at the Manville Dam, on the Blackstone River, in Providence County, Rhode Island. 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: (1) The existing 22-foot-high, 260-foot-long Manville Dam with one-foot flashboards owned by the Town of Cumberland; (2) an existing 76-acre impoundment with a normal water surface elevation of 106 feet (National Geodetic Vertical Datum 1929); (3) a new trashrack and stoplogs; (4) a new approximately 60-foot-wide intake in place of a 60-foot-long section of the spillway that would be removed; (5) new 10-foot-long, 12-foot-wide dual concrete penstocks; (6) a new 30-foot-tall (extending 20 feet above the spillway), 60-foot-wide powerhouse adjacent to the training walls; (7) a new 25-foot-wide, 5-foot-deep crest gate adjacent to the powerhouse; (8) two new bulb Kaplan turbines with a combined installed capacity of 1,026 kilowatts; (9) a new approximately 800-foot-long, 480-volt transmission line; and (10) appurtenant facilities. The project would have an estimated annual generation of 4,221 megawatt-hours.

Applicant Contact: Peter Bouchard, Valley Affordable Housing Corporation, 895 Mendon Road, Cumberland, RI 02864; phone: (401) 334–2802.

FERC Contact: Brandon Cherry; phone: (202) 502–8328.

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 at *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–13944) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2138 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13882–000]

City of Salem, OR; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Interventions

January 21, 2011.

On November 19, 2010, the City of Salem, Oregon filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower development in the Geren Island Diversion on the North Santiam River in Marion County, Oregon. 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 three developments: Franzen Reservoir Plant; Turner Control Plant; and Fairmount Reservoir Plant, and would utilize flows from two existing pipelines for the City of Salem's water system drawing water from the existing Franzen and Fairmount reservoirs.

The Franzen Reservoir Plant would consist of: (1) A new penstock intake at the powerhouse site; (2) a new powerhouse with a single turbine/generator unit at an installed capacity of 0.5 megawatt (MW); and (3) a new standard flow meter to direct flow from the penstock to the turbine.

The Turner Control Plant would consist of: (1) A new penstock intake at the powerhouse site; (2) a new powerhouse with a single turbine/generator unit at an installed capacity of 0.5 MW; and (3) a new standard flow meter to direct flow from the penstock to the turbine.

The Fairmount Reservoir Plant would consist of: (1) A new 36-inch-diameter bypass pipeline to convey water from the Franzen reservoir to the Fairmount reservoir; (2) a new powerhouse with a single turbine/generator unit at an installed capacity of 0.1 MW; and (3) a new standard flow meter to direct flow from the penstock to the turbine.

The three developments would have a combined capacity of 1.1 MW. The proposed project would have an average annual generation of 8,000,000 kilowatt-hours.

Applicant Contact: Linda Norris, City of Salem, Oregon, 555 Liberty Street SE., Room 220, Salem, OR 97301; phone: (503) 588–6255; e-mail: *manager@cityofsalem.net*.

FERC Contact: Kelly Wolcott (202) 502–6480.

Competing Application: This application competes with Project No. 13721–000 filed May 5, 2010.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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–13882) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2142 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13881–000]

City of Astoria, OR; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Interventions

January 21, 2011.

On November 19, 2010, the City of Astoria, Oregon filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Bear Creek Water Supply Hydroelectric Project utilizing the Astoria Municipal Water System on Bear Creek in Clatsop County, Oregon. 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 three developments, Site 1 Plant, Reservoir 3 Plant, and Reservoir 2 Plant, and would include the following facilities:

Site 1 Plant

(1) An 8-foot-long, 14-foot-wide vault housing a single 40-kilowatt (kW) turbine/generator unit; and (2) an approximately 1,290-foot-long, 26-inch-diameter high density polyethylene penstock.

Reservoir 3 Plant

(1) The existing Reservoir 3 with a surface area of 3.4-acres and a storage capacity of approximately 61-acre-foot at elevation 426 feet mean sea level (msl); (2) an existing structure which will house a single turbine/generator with an installed capacity of 50 kW unit; (3) a standard flow meter; and (4) an approximately 10-mile-long, 21-inch-diameter steel penstock.

Reservoir 2 Plant

(1) The existing Reservoir 2 with a surface area of approximately 2.4-acres and a storage capacity of approximately 15-acre-foot at elevation of 265-feet msl; (2) an existing structure which will house a single turbine/generator unit with an installed capacity of 50 kW; (3) a standard flow meter; and (4) an approximately one-mile-long, 21-inch-diameter steel penstock.

The three developments would have a combined capacity of 145 kilowatts. The proposed project would have an average annual generation of 850,000 kilowatt-hours.

Applicant Contact: Paul Benoit, City of Astoria, Oregon, 1095 Duane St., Astoria, OR 97103; phone: (503) 325–5824; e-mail: *pbenoit@astoria.or.us.*

FERC Contact: Kelly Wolcott (202) 502–6480.

Competing Applications: This application competes with Project No. 13720–000 filed May 5, 2010.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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–13881) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2144 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13886–000]

Idaho Irrigation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 21, 2011.

On November 12, 2010, the Idaho Irrigation District 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 Idaho Irrigation District Hydroelectric Project (project) to be located on the Idaho Canal, a tributary of the Snake River, in Bonneville and Jefferson counties, Idaho. 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) An existing canal intake consisting of a 75-foot-wide trash rack structure and, about 50 feet downstream, a 10-foot-high, 71-foot-wide headgate structure; (2) the upper 3.2 miles of the existing Idaho Canal, whose embankment heights within that reach would be increased 1–3 feet to convey up to 1,000 cubic feet per second (cfs) of additional flows; (3) a new gate structure diverting flows to the powerhouse while allowing irrigation flows to continue down the canal; (4) a

new powerhouse, containing one 1.2-megawatt Kaplan turbine with a hydraulic capacity of 1,000 cfs and a generator, discharging flows into the Snake River; (5) a gated overflow spillway to pass flood flows around the powerhouse; (6) a 3,000-foot-long, 15-kilovolt transmission line extending to a distribution line owned by Rocky Mountain Power; (7) a switchyard; and (8) appurtenant facilities. Flow diversions for the project would take into account minimum flow requirements for the bypassed reach of the Snake River. The estimated annual generation of the project would be 7.5 gigawatt-hours.

Applicant Contact: Mr. Alan D. Kelsch, Chairman, Idaho Irrigation District, 496 E. 14th Street, Idaho Falls, Idaho 83404; phone: (208) 522–2356.

FERC Contact: Dianne Rodman; phone: (202) 502–6077.

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–13886–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2143 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–61–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 24, 2011.

Take notice that on January 19, 2011, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, pursuant to its blanket certificate issued in Docket Nos. CP82–487–000, *et al.,*[1] filed an application in accordance to sections 157.210 and 157.213(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for the construction and operation of new natural gas storage and transmission facilities located in Fallon County, Montana (Baker Storage Enhancement Project), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In order to accommodate requests for increased firm storage and transportation services, Williston Basin proposes to drill three additional storage wells, one observation well, and associated storage field pipelines and measurement facilities at its Baker Storage Reservoir. Williston Basin also adds two natural gas-fueled units, rated at 2,370 hp each, at the Monarch Compressor Station; and one natural gas-fueled unit, rated at 1,680 hp, at the Sandstone Creek Compressor Station. The proposed facilities will enhance the deliverability of the Baker Storage Reservoir by 35,000 Mcf/day and provide 7,000 Mcf/day of incremental transportation transfer capacity. The cost of the proposed facilities is approximately $12,355,000. Williston Basin proposes the facilities to be completed and placed into service by November 1, 2011.

Any questions concerning this application may be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century Avenue, Bismarck, North Dakota 58503, (701) 530–1560, or e-mail at *keith.tiggelaar@wbip.com.*

This filing is available for review at the Commission 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 filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2147 Filed 1–31–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 30 FERC ¶ 61,143 (1982).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9260–5]

California State Motor Vehicle and Nonroad Engine Pollution Control Standards; Mobile Cargo Handling Equipment Regulation at Ports and Intermodal Rail Yards; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for mobile cargo handling equipment at ports and intermodal rail yards (Mobile Cargo

Handling Equipment). CARB's Mobile Cargo Handling Equipment requirements are designed to use best available control technologies to reduce public exposure to emissions of diesel particulate matter and nitrogen oxides. The requirements apply to any motorized vehicle used to handle cargo, including yard trucks, top handlers, side handlers, rubber-tired gantry cranes, forklifts, dozers, and loaders. By letter dated January 29, 2007, CARB has requested that EPA confirm that certain requirements are within-the-scope of previously granted EPA waivers and authorizations under the Clean Air Act, and grant a new full authorization pursuant to the Clean Air Act for other requirements that are applicable to nonroad engines. This notice announces that EPA has tentatively scheduled a public hearing to consider California's Mobile Cargo Handling Equipment request and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on Thursday, February 17, 2011, at 1 p.m. EPA will hold a hearing only if any party notifies EPA by February 7, 2011, expressing its interest in presenting oral testimony. By February 11, 2011, any person who plans to attend the hearing may call David Alexander at (202) 343–9540, to learn if a hearing will be held or may check the following webpage for an update: *http://www.epa.gov/otaq/cafr.htm.*

Parties wishing to present oral testimony at the public hearing should provide written notice to David Alexander at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held in Room 1332A of the Ariel Rios North Building, which is located at 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until March 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0862, by one of the following methods:

- On-Line at *http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2010–0862, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0862. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2010–0862. 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, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.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. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2010–0862, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Alexander, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9540. Fax: (202) 343–2800. E-mail: *alexander.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's Mobile Cargo Handling Requirements for Equipment at Ports and Intermodal Rail Yards

In a letter dated January 29, 2007, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act ("CAA" or "the Act"), regarding its regulations for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards ("Mobile Cargo Handling Equipment" or "CHE"). CARB's Mobile Cargo Handling Equipment regulations were adopted at CARB's December 8, 2005 public hearing (by Resolution 05–62) and were subsequently modified

after making the regulation available for supplemental public comment by CARB's Executive Officer in Executive Order R–06–007 on June 2, 2006. The Mobile Cargo Handling Equipment regulations are codified at title 12, California Code of Regulations section 2479.

CARB's Mobile Cargo Handling Equipment regulations establish best available control technology (BACT) requirements that affect the sellers, renters, lessors, owners, and operators of mobile cargo handling equipment that are used at California's ports or intermodal rail yards. For newly purchased, leased, or rented equipment, certified on-road engines would be required if available for the specific equipment type and application. Otherwise, the highest level certified off-road engine would be required, along with installation of the highest level verified diesel emission control strategy (VDECS) within one year of purchase, lease, or rent, or within six months of becoming available, if after a year. The regulations require in-use yard trucks to meet BACT performance standards primarily through accelerated turnover of older yard trucks to those equipped with cleaner, on-road engines (2007 model year or later). Owners or operators who have installed VDECS prior to the end of 2006, or who are already using certified on-road engines, are given additional time to comply. In addition, compliance is phased in for owners or operators who have more than three yard trucks in their fleet.

Equipment other than yard trucks (non-yard trucks) would also be required to meet BACT, constituting replacement by cleaner on-road or off-road engines and/or the use of retrofits. When retrofits are used, replacement with Tier 4 off-road engines or installation of a Level 3 VDECS (which achieves an eighty-five percent reduction of emissions of diesel particulate matter) is required for some equipment. The Mobile Cargo Handling Equipment regulations also include recordkeeping and reporting requirements for owners and operators of mobile cargo handling equipment.

II. Clean Air Act New Motor Vehicle and Engine Waivers of Preemption

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines; it provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (i.e., if such State makes a "protectiveness determination"). Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver.[1] The Administrator must grant a waiver unless she finds that: (A) California's above-noted "protectiveness determination" is arbitrary and capricious;[2] (B) California does not need such State standards to meet compelling and extraordinary conditions;[3] or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[4] EPA has previously stated that consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, giving due consideration of costs, and that California and applicable Federal test procedures be consistent.[5]

III. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards. Title 40 of the Code of Federal Regulations, part 1074.105 provides:

> (a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.
>
> (b) The authorization will not be granted if the Administrator finds that any of the following are true:
>
> (1) California's determination is arbitrary and capricious.
>
> (2) California does not need such standards to meet compelling and extraordinary conditions.
>
> (3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.
>
> (c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[6]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver

[1] *See* S.Rep. No. 90–403 at 632 (1967).

[2] Clean Air Act (CAA) section 209(b)(1)(A).

[3] CAA section 209(b)(1)(B).

[4] CAA section 209(b)(1)(C).

[5] *See, e.g.,* 74 FR 32767 (July 8, 2009); see also Motor and Equipment Manufacturers Association v. EPA (MEMA I), 627 F.2d 1095, 1126 (D.C.Cir. 1979).

[6] *See* 59 FR 36969 (July 20, 1994).

if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

IV. Within-the-Scope Determinations

If California amends regulations that were previously granted a waiver of preemption or authorization, EPA can confirm that the amended regulations are within-the-scope of the previously granted waiver or authorization. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior waivers or authorizations.

V. EPA's Request for Public Comment

When EPA receives a new waiver or authorization request from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment, and then publishes a decision in the **Federal Register** following the conclusion of the comment period. In contrast, when EPA receives a request from CARB for a within-the-scope confirmation, EPA may publish a decision in the **Federal Register** and concurrently invite public comment if an interested party is opposed to EPA's decision.

Because CARB's request regarding its Mobile Cargo Handling Equipment regulations includes both within-the-scope confirmation requests and a request for a full authorization, EPA is inviting comment on several issues. First, we request comment on which criteria we should apply to the various provisions included within CARB's Mobile Cargo Handling Equipment regulations. More specifically, we are requesting comment on whether any of the particular regulatory provisions included in CARB's request should be considered as within-the-scope of previous EPA waivers or authorizations, and which particular regulatory provisions should be so considered, or whether EPA should consider all of the regulatory provisions as requiring a full waiver or authorization. Next, we seek comment on application of the appropriate criteria. To the extent that a commenter believes a regulatory provision is within-the-scope, they should also comment on how EPA should apply its within-the-scope criteria; alternatively, should a commenter believe that a particular regulatory provision requires a full waiver or authorization, we request comment on whether California has met the criteria for receipt of a full waiver or authorization.

Within the context of a within-the-scope analysis, EPA invites comment on whether California's Mobile Cargo Handling Equipment requirements: (1) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

As stated above, EPA is also requesting comment on issues relevant to a full waiver and authorization analyses, in the event that EPA determines that any of California's standards should not be considered within-the-scope of CARB's previous waivers and authorizations, and instead require a full waiver or authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

VI. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 17, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2010–0862.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: January 25, 2011.

Margo T. Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011–2082 Filed 1–31–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Public Availability of Federal Election Commission, Procurement Division FY 2010 Service Contract Inventory

AGENCY: Federal Election Commission.

ACTION: Notice of public availability of FY 2010 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), FEC PROCUREMENT DIVISION 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.

The FEC Procurement Division has posted its inventory and a summary of the inventory on the FEC homepage at the following link: *http://www.fec.gov/pages/procure/procure.shtml.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Bret A. Zieman, Director of Procurement, at 202–694–1225 or *BZIEMAN@FEC.GOV.*

Dated: January 26, 2011.

Shawn Woodhead Werth,

Secretary and Clerk, Federal Election Commission.

[FR Doc. 2011–2035 Filed 1–31–11; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Acting Federal Reserve Board Clearance Officer: Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer: Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks.

Agency form number: Reg H–5.

OMB control number: 7100–0261.

Frequency: Aggregate report, quarterly; policy statement, annually.

Reporters: State member banks.

Estimated annual reporting hours: 16,860 hours.

Estimated average hours per response: Aggregate report: 5 hours; Policy statement: 20 hours.

Number of respondents: 843.

General description of report: This information collection is mandatory pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828(o)) which authorizes the Federal Reserve to require the recordkeeping requirements associated with the Board's Regulation H (12 CFR 208.51). Since the information is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. However, information gathered by the Federal Reserve during examinations of state member banks would be deemed exempt from disclosure under exemption 8 of FOIA. 5 U.S.C. 552(b)(8). In addition, exemptions 4 and 6 of FOIA, (5 U.S.C. 552(b)(4) and (b)(6)) also may apply to certain data (specifically, individual loans identified as in excess of supervisory loan-to-value limits) collected in response to these requirements if gathered by the Federal Reserve, depending on the particular circumstances. These exemptions relate to confidential commercial and financial information, and personal information, respectively. Applicability of these exemptions would be determined on a case-by-case basis.

Abstract: State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Current Actions: On November 19, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 70919) requesting public comment for 60 days on the extension, without revision, of Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks. The comment period for this notice expired on January 18, 2011. The Federal Reserve did not receive any comments.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Minor Revisions, of the Following Reports

1. *Report title:* Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form numbers: FR 28, FR 28s, FR 28i.

OMB control number: 7100–0181.

Frequency: On Occasion.

Reporters: Employment applicants.

Annual reporting hours: 3,558 hours.

Estimated average hours per response: FR 28: 1 hour; FR 28s: 1 minute; FR 28i: 5 minutes.

Number of respondents: FR 28: 3,500; FR 28s: 2,000; FR 28i: 300.

General description of report: This information collection is required to obtain a benefit and is authorized pursuant to Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). Information provided will be kept confidential under exemption (b)(6) of the FOIA to the extent that the disclosure of information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6).

Abstract: The Application collects information to determine the qualifications and availability of applicants for employment with the Board such as information on education and training, employment record, military service record, and other information since the time the applicant left high school. Included with the Application are two supplemental questionnaires: (1) The Applicant's Voluntary Self-Identification Form (FR 28s), which collects information on the applicant's gender and ethnic group and (2) The Research Assistant Candidate Survey of Interests (FR 28i), which collects information from candidates applying for Research Assistant positions on their level of interest in economics and related areas.

Current Actions: On November 19, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 70919) requesting public comment for 60 days on the extension, with minor revision, of the Application for Employment with the Board of Governors of the Federal Reserve System. The comment period for this notice expired on January 18, 2011. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

2. *Report title:* Ongoing Intermittent Survey of Households.

Agency form numbers: FR 3016.

OMB control number: 7100–0150.

Frequency: On Occasion.

Reporters: Households and individuals.

Annual reporting hours: 633 hours.

Estimated average hours per response: Division of Research & Statistics, 1.58 minutes; Division of Consumer & Community Affairs, 3 minutes; Other divisions, 5 minutes; and Non-SRC surveys, 90 minutes.

Number of respondents: 500.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263 and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to the Federal Reserve intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments. The Federal Reserve primarily uses the survey to study consumer financial decisions, attitudes, and payment behavior.

Current Actions: On November 19, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 70919) requesting public comment for 60 days on the extension, with revision, of the Intermittent Survey of Households. The comment period for this notice expired on January 18, 2011. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, January 26, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–2083 Filed 1–31–11; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Medicare Payment Advisory Commission Nomination Letters

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. For appointments to MedPAC that will be effective May 1, 2011, I am announcing the following: Letters of nomination should be submitted between February 1 and March 7, 2011, to ensure adequate opportunity for review and consideration of nominees prior to the appointment of new members.

ADDRESSES: GAO: 441 G Street, NW., Washington, DC 20548. MedPAC: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800.

42 U.S.C. 1395b–6.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2011–2057 Filed 1–31–11; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 materials, 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 Library of Medicine Special Emphasis Panel, Loan Repayment Program.

Date: April 20, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe H. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2203 Filed 1–31–11; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary CRIC Study.

Date: March 4, 2011.

Time: 3 p.m. to 4 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: Michael W. Edwards, PhD., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Support of NIDDK Program Project Grants.

Date: March 11, 2011.

Time: 1 p.m. to 5 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: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(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 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2191 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board.

Date: February 23, 2011.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: Presentation and discussion will focus on NIH activities related to the Board's recommendations to create a new center for advancing translational medicine and therapeutics development. As requested by the Board in its Report on Translational Medicine and Therapeutics, NIH will provide an update on the proposed creation of a new center and its evaluation of the impact of such a center on other relevant extant programs at NIH, including the National Center for Research Resources. The Board will also discuss next steps regarding future SMRB activities. Time will be allotted on the agenda for public comment. To sign up for public comment, please submit your name and affiliation to the contact person listed below by February 22, 2011. Sign up will be restricted to one sign up per e-mail. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the contact person address below.

The toll-free number to participate in the teleconference is 1–800–779–1545. Indicate to the conference operator that your Participant pass code is "NIH'.

Place: National Institutes of Health, Office of the Director, NIH, Office of Science Policy, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Lyric Jorgenson, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 496–6837.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The draft meeting agenda, meeting materials, dial-in information, and other information about the SMRB, will be available at *http://smrb.od.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2190 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: March 7, 2011.

Time: 9 to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, (301) 496–7628, *FF6P@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsc/BS/BS.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2189 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Special Emphasis Panel; Prenatal Events-Postnatal Consequences.

Date: February 24, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2188 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development, Special Emphasis Panel. Alpha-Endosulfine in Mamalian Oocyte Meiotic Maturation.

Date: February 18, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01G, Bethesda, MD 20892–7510, 301–435–6889, *ravindrn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: *January 25, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2187 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, 2011–05 Special Emphasis Panel K-Award Review Meeting.

Date: March 2, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Suite 200, Room #242, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

Dated: January 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2186 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Technologies to Reduce Health Disparities SBIR 2011/05.

Date: March 9, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: January 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2185 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee.

Date: February 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6889, *ravindrn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

FR Doc. 2011–2183 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 16–17, 2011.

Open: February 16, 2011, 8:30 a.m. to 2:45 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 16, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, PhD, Interim Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2182 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Health Behavior.

Date: February 9, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2207 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Detection of Cancer Biomarkers on a Universal Nanoplatform.

Date: March 24, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Glycosylation-Specific Research Reagents (Antibodies and Aptamers).

Date: March 31, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Clinical Automated Multiplex Affinity Capture Technology for Detecting Low Abundance Cancer-Related Proteins/Peptides.

Date: April 1, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2206 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunology.

Date: February 22, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Etiology.

Date: February 28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk Prevention and Health Behavior.

Date: March 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.

Contact Person: Martha M Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2202 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: February 24–25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Harmony, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2193 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; T Cells.

Date: February 25, 2011.

Time: 1:30 p.m. to 5:30 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: Lakshmi Ramachandra, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC–7616, Room 3264, Bethesda, MD 20892–7616, 301–496–2550, *Ramachandral@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 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2192 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: February 22–23, 2011.

Time 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2210 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: February 17–18, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2209 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical

Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: March 8, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsc.htm,* where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2204 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Vaccine for Prevention of HIV Infection.

Date: February 24, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Irina V. Gordienko, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–594–1566, *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: March 28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bratin K. Saha, PhD, Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8041, Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2205 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Enabling Bioanalytical and Imaging Technologies.

Date: February 17, 2011.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery Systems, and Nanotechnology.

Date: February 21–22, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Neuroscience.

Date: February 22–23, 2011.

Time: 7 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Bioanalytical and Imaging Technologies.

Date: February 23–24, 2011.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: February 24–25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery for the Nervous System.

Date: February 25, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry and Biophysics.

Date: February 28–March 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2208 Filed 1–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 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.

Proposed Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930–0279)—Revision

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems; and, (3) build prevention capacity and infrastructure at the State-, territorial-, tribal- and community-levels.

Five steps comprise the SPF:

Step 1: Profile population needs, resources, and readiness to address the problems and gaps in service delivery.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices and infrastructure development activities.

Step 5: Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.

An evaluation team is currently implementing a multi-method, quasi-experimental evaluation of the first two Strategic Prevention Framework State Incentive Grant (SPF SIG) cohorts receiving grants in FY 2004 and FY 2005. A second evaluation is being conducted with the SPF SIG Cohorts III, IV and V. This notice invites comments for revision to the protocol for the ongoing cross-site evaluations of the Strategic Prevention Framework State Incentive Grant (SPF SIG) (OMB No. 0930–0279) which expires on 11/30/12. This revision includes three parts:

(1) Continuation of the use of the previously approved two-part Community Level Instrument (CLI Parts I and II) for Cohorts I and II and the use of an instrument to assess the sustainability of grantee implementation and infrastructure accomplishments which is a modification of an instrument used in an earlier phase of the evaluation.

(2) The addition of one more Cohort (Cohort V) which will use the previously approved SPF SIG cross-site evaluation instruments. All three instruments are modified versions of data collection protocols used by Cohorts I and II and have received OMB approval (OMB No. 0930–0279). The three instruments are:

a. A Grantee-Level SPF Implementation Instrument,

b. A Grantee-Level Infrastructure Instrument, and

c. A two-part Community-Level SPF Implementation Instrument.

(3) Recalculation of burden numbers for Cohort IV to replace estimates that had been based on 20 grantees to reflect the 25 grantees actually funded.

An additional Cohort III, IV, and V evaluation component (*i.e.,* participant-level NOMs outcomes) is also included in this submission as part of the comprehensive evaluation, however, no associated burden from this evaluation activity is being imposed and therefore clearance to conduct the activities is not being requested. Specifically, Cohort III, IV, and V SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering the collection of participant-level NOMs outcomes by all SAMHSA/CSAP grantees.

Every attempt has been made to make the evaluation for Cohorts III, IV, and V comparable to Cohorts I and II. However, initial resource constraints for the Cohorts III, IV, and V evaluation have necessitated some streamlining of the original evaluation design. Since the ultimate goal is to fund all eligible jurisdictions, there are no control groups at the grantee level for Cohorts III, IV, and V. The primary evaluation objective is to determine the impact of SPF SIG on the reduction of substance abuse related problems, on building state prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee, community, and participant levels will provide information about process and system outcomes at the grantee and community levels as well as context for analyzing participant-level NOMs outcomes.

Grantee-Level Data Collection

Cohort I and II Continuation

The Sustainability Interview will be conducted during Phase II of the evaluation in 2011 (Cohort I) and 2012 (Cohort II). The interview guide is adapted from the Phase I instruments (OMB No. 0930–0279) and focuses on state-level prevention capacity and infrastructure in relation to the five steps of the SPF process: needs assessment, capacity building, strategic planning, implementation of evidence-based programs, policies, and practices (EBPPPs), and evaluation/monitoring. The interviews will be aimed at understanding the status of the prevention infrastructure at the time of the interview, whether the status has changed since the previous rounds of interviews (conducted in 2007 and 2009), and whether the SPF SIG had any influence on changes that might have occurred.

Cohort III, IV, and V Revision

Two Grantee-level Instruments (GLI) were developed to gather information about the infrastructure of the grantee's overall prevention system and collect data regarding the grantee's efforts and progress in implementing the Strategic Prevention Framework 5-step process. Both instruments are modified versions of the grantee-level interview protocols used in the SPF SIG Cohort I and II Cross-Site Evaluation and have received OMB clearance for use with Cohorts III and IV (OMB No. 0930–0279). The total burden imposed by the original interview protocols has been reduced by restructuring the format of the original protocol, deleting several questions and replacing the majority of open-ended questions with multiple-choice-response questions. The *Infrastructure Instrument* will capture data to assess infrastructure change and to test the relationship of this change to outcomes. The *Strategic Prevention Framework Implementation Instrument* will be used to assess the relationship between SPF implementation and change in the NOMs. Information for both surveys will be gathered by the grantees' evaluators twice over the life of the SPF SIG award.

Based on the current 16 grantees funded in Cohort III, and 25 funded in Cohort IV, and 10 funded in Cohort V, the estimated annual burden for grantee-level data collection is displayed below in Table 1. The burden estimates for the GLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III, IV, and V evaluation team.

Community-Level Data Collection (Continuation and Revision)

Cohort I and II Continuation

The Community-level Instrument (CLI) is a two part, Web-based survey for capturing information about SPF SIG implementation at the community level (originally submitted as an addendum to OMB No. 0930–0279). Part I of this instrument was developed to assess the progress of communities as they implement the Strategic Prevention Framework (SPF), and Part II was developed to gather descriptive information about the specific interventions being implemented at the community level and the populations being served including the gender, age, race, ethnicity, and number of individuals in target populations. Each SPF SIG funded community will complete a separate Part II form for each intervention they implement.

The CLI (Parts I and II) was designed to be administered two times a year (every six months) over the course of the SPF SIG Cohort I and II initiative. Four rounds of data were collected under the current OMB approval period and the Cohorts I and II cross-site evaluation team plans to collect additional rounds once this request for a revision is approved. Data from this instrument will allow CSAP to assess the progress of the communities in their implementation of both the SPF and prevention-related interventions funded under the initiative. The data may also be used to assess obstacles to the implementation of the SPF and prevention-related interventions and facilitate mid-course corrections for communities experiencing implementation difficulties.

The estimated annual burden for community-level data collection is displayed below in Table 1. Note that the total burden reflects the 443 communities that have received SPF funds from their respective Cohort I and Cohort 2 States. Burden estimates are based on pilot respondents' feedback as well as the experience of the survey developers reported in the original OMB submission (OMB No. 0930–0279). Additionally, an individual community's burden may be lower than the burden displayed in Table 1 because all sections of the Community-level Instrument (parts I and II) may not apply for each reporting period as community partners work through the SPF steps and only report on the step-related activities addressed. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys.

Cohort III, IV, and V (Revision)

The Community-Level Instrument to be completed by Cohort III, IV, and V funded subrecipient communities is a modified version of the one in use in the SPF SIG Cohorts I and II Cross-Site Evaluation and use of these modified instruments has been approved by OMB for Cohorts III and IV (OMB No. 0930–0279). The total burden imposed by the original instrument was reduced by reorganizing the format of the original instrument, optimizing the use of skip

patterns, and replacing the majority of open-ended questions with multiple-choice-response questions.

Part I of the instrument will gather information on the communities' progress implementing the five SPF SIG steps and efforts taken to ensure cultural competency throughout the SPF SIG process. Subrecipient communities receiving SPF SIG awards will be required to complete Part I of the instrument annually. Part 2 will capture data on the specific prevention intervention(s) implemented at the community level. A single prevention intervention may be comprised of a single strategy or a set of multiple strategies. A Part II instrument will be completed for each prevention intervention strategy implemented during the specified reporting period. Specific questions will be tailored to match the type of prevention intervention strategy implemented (e.g., Prevention Education, Community-based Processes, and Environmental). Information collected on each strategy will include date of implementation, numbers of groups and participants served, frequency of activities, and gender, age, race, and ethnicity of population served/affected. Subrecipient communities' partners receiving SPF SIG awards will be required to update Part II of the instrument a minimum of every six months.

The estimated annual burden for specific segments of the community-level data collection is displayed in Table 1. The burden estimates for the CLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III, IV, and V evaluation team. The total burden assumes an average of 15 community-level subrecipients per grantee (n=51 Grantees) for a total of 765 community respondents, annual completion of the CLI Part I, a minimum of two instrument updates per year for the CLI Part II, and an average of three distinct prevention intervention strategies implemented by each community during a 6-month period. Additionally, some questions will be addressed only once and the responses will be used to pre-fill subsequent updates.

Participant-Level Data Collection (Cohort III, IV, and V—Continuation)

Participant-level change will be measured using the CSAP NOMs Adult and Youth Programs Survey Forms already approved by OMB (OMB No. 0930–0230). Subrecipient communities will have the opportunity to select relevant measures from the CSAP NOMs Adult and Youth Programs Survey Forms based on site-specific targeted program outcomes and may voluntarily select additional outcome measures that are relevant to their own initiatives. Cohort III, IV, and V SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering all SAMHSA/CSAP grantees, therefore no additional burden for this evaluation activity is being imposed and clearance to conduct the activities is not being requested.

Total Estimates of Annualized Hour Burden

Estimates of total and annualized reporting burden for respondents by evaluation cohort are displayed below in Table 1. Overall summaries appear in Table 2. The estimated average annual burden of 5,773 hours is based on the completion of the Community Level-Instrument (CLI Parts I and II) and Sustainability Interview for Cohorts I and II, and the Grantee-level Instruments (GLI) and the Community-Level Instrument (CLI) for Cohorts III, IV, and V.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)	Hourly wage cost	Total hour cost
Cohorts 1 and 2 Grantee-Level Burden							
CLI Grantee Level Input	Grantee	1	26	2	52.0	$42.00	$2,184
Sustainability Interview	Grantee	1.5	26	1	39.0	42.00	1,638
Total Burden	**Grantee**	**2.5**	**26**	**3**	**91.0**	**42.00**	**3,822**
Average Annual Burden Over 4 Reporting Periods	**Grantee**		**26**		**22.8**	**42.00**	**956**
Cohorts 1 and 2 Community-Level Burden							
CLI Part I	Community	2.17	443	2	1,922.6	32.00	61,523
CLI Part II	Community	2.17	443	8	7,690.5	32.00	246,095
Review of Past Responses	Community	2.5	443	2	2,215.0	32.00	70,880
Total Burden	**Community**	**6.84**	**443**	**12**	**11,828.1**	**32.00**	**378,498**
Average Annual Burden Over 4 Reporting Periods	**Community**		**443**		**2,957.0**	**32.00**	**94,625**
Grantee-Level Burden Cohort 3							
GLI Infrastructure Instrument	Grantee	2. 50	16	1	40.0	42.00	1,680
GLI Implementation Instrument	Grantee	2.25	16	1	36.0	42.00	1,512
CLI Part I, 1–20: Community Contact Information—Updates	Grantee	0.25	16	1	4.0	42.00	168
Total Burden	**Grantee**				**80.0**	**42.00**	**3,360**
Average Annual Burden Over 4 Reporting Periods	**Grantee**				**20.0**	**42.00**	**840**
Community-Level Burden Cohort 3							
CLI Part I, 21–172: Community SPF Activities —Updates	Community	0.75	240	1	180	32.00	5,760
CLI Part II—Updates	Community	0.5	240	6	720	32.00	23,040
Total Burden	**Community**				**900**	**32.00**	**28,800**
Average Annual Burden Over 4 Reporting Periods	**Community**				**225**	**32.00**	**7,200**
Grantee-Level Burden Cohort 4							
GLI Infrastructure Instruments	Grantee	2. 50	25	1	**62.5**	42.00	**2,625**
GLI Implementation Instruments	Grantee	2.25	25	2	**112.5**	42.00	**4,725**
CLI Part I, 1–20: Community Contact Information—Initialization.	Grantee	1.5	25	1	**37.5**	42.00	**1,575**
CLI Part I, 1–20: Community Contact Information—Updates	Grantee	0.25	25	3	**18.75**	42.00	**787**
Total Burden	**Grantee**				**231.25**	**42.00**	**9,712**
Average Annual Burden Over 4 Reporting Periods	**Grantee**				**57.8**	**42.00**	**2,428**
Community-Level Burden Cohort 4							
CLI Part I, 21–172: Community SPF Activities —Initialization.	Community	3	375	1	**1,125**	32.00	**36,000**

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS—Continued

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)	Hourly wage cost	Total hour cost
CLI Part II—Initialization	Community	0.75	375	6	**1,687.5**	32.00	**54,000**
CLI Part I, 21–172: Community SPF Activities—Updates	Community	0.75	375	3	**843.75**	32.00	**27,000**
CLI Part II—Updates	Community	0.5	375	18	**3,375**	32.00	**108,000**
Total Burden	**Community**				**7,031.25**	**32.00**	**225,000**
Average Annual Burden Over 4 Reporting Periods	**Community**				**1,757.8**	**32.00**	**56,250**
Grantee-Level Burden Cohort 5							
GLI Infrastructure Instruments	Grantee	2. 5	10	2	50	42.00	2,100
GLI Implementation Instruments	Grantee	2.25	10	2	45	42.00	1,890
CLI Part I, 1–20: Community Contact Information—Initialization.	Grantee	1.5	10	1	15.0	42.00	630
CLI Part I, 1–20: Community Contact Information—Updates	Grantee	0.25	10	3	7.5	42.00	315
Total Burden	**Grantee**				**117.5**	**42.00**	**4,935**
Average Annual Burden Over 4 Reporting Periods	**Grantee**				**29.4**	**42.00**	**1,234**
Community-Level Burden Cohort 5							
CLI Part I, 21–172: Community SPF Activities—Initialization	Community	3	150	1	450	32.00	14,400
CLI Part II—Initialization	Community	0.75	150	6	675	32.00	21,600
CLI Part I, 21–172: Community SPF Activities—Updates	Community	0.75	150	3	337.5	32.00	10,800
CLI Part II—Updates	Community	0.5	150	18	1,350	32.00	43,200
Total Burden	**Community**				**2,812.5**	**32.00**	**90,000**
Average Annual Burden Over 4 Reporting Periods	**Community**				**703.12**	**32.00**	**22,500**

TABLE 2—ANNUALIZED SUMMARY TABLE

	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses	Total burden (hrs.)	Hourly wage cost	Total hour cost
Total Burden All Cohorts							
Average Annual Burden	**Grantee**	**1.44**	**77**	**90.25**	**129.9**	**42.00**	**5,455**
	Community	**1.04**	**1,208**	**5,424**	**5,643**	**32.00**	**180,576**
	Overall	**1.05**	**1,285**	**5,514.25**	**5,773**		**186,031**

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: January 24, 2011.

Elaine Parry,

Director, Office of Program Services.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0003]

Privacy Act of 1974; Department of Homeland Security Office of Operations Coordination and Planning—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security Office of Operations Coordination and Planning—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records." The Office of Operations Coordination and Planning (OPS) National Operations Center (NOC), has launched and leads the Publicly Available Social Media Monitoring and Situational Awareness (Initiative) to assist the Department of Homeland Security (DHS) and its components involved in fulfilling OPS statutory responsibility to provide situational awareness. The NOC and participating components may share this de-identified information with international partners and the private sector where necessary and appropriate for coordination. While this Initiative is not designed to actively collect Personally Identifiable Information (PII), OPS is publishing this System of Records Notice (SORN) because the Initiative may collect PII for certain narrowly tailored categories. For example, in the event of an *in extremis* situation involving potential life and death, OPS will share certain PII with the responding authority in order for them to take the necessary actions to save a life, such as name and location of a person calling for help buried under rubble, or hiding in a hotel room when the hotel is under attack by terrorists. In the event PII comes into the Department's possession under circumstances other than those itemized herein, the NOC will redact all PII prior to further dissemination of any collected information. This collection is currently covered under DHS/OPS–003 but in order to provide more transparency, DHS is issuing a specific SORN for this activity. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 3, 2011. This new system will be effective March 3, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0003 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Michael Page (202–357–7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS), including the National Operations Center (NOC), proposes to establish a new DHS system of records titled, "DHS/OPS—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records."

This system of records will allow DHS/OPS, including the NOC, to provide situational awareness and establish a common operating picture for the entire federal government, and for state, local, and tribal governments as appropriate, and to ensure that critical disaster-related information reaches government decision makers. *See* Section 515 of the Homeland Security Act (6 U.S.C. 321d(b)(1)). The law defines the term "situational awareness" as "information gathered from a variety of sources that, when communicated to emergency managers and decision makers, can form the basis for incident management decision-making." OPS has launched and leads this Initiative to fulfill its legal mandate to provide situational awareness and establish a common operating picture. In doing so, OPS is working with select components within the Department to achieve this statutory mandate. This collection is currently covered under DHS/OPS–003 but in order to provide more transparency, DHS is issuing a specific SORN for this activity.

The NOC will use Internet-based platforms that provide a variety of ways to follow activity related to monitoring publicly available online forums, blogs, public websites, and message boards. Through the use of publicly available search engines and content aggregators the NOC will monitor activities on social media for information that the NOC can use to provide situational awareness and establish a common operating picture. The NOC will gather, store, analyze, and disseminate relevant and appropriate de-identified information to federal, state, local, and foreign governments, and private sector partners authorized to receive situational awareness and a common operating picture. Under this initiative, OPS generally will not: (1) Actively seek personally identifiable information (PII); (2) post any information; (3) actively seek to connect with other internal/external personal users; (4) accept other internal/external personal users' invitations to connect; or (5) interact on social media sites. However, OPS is permitted to establish user names and passwords to form profiles and follow relevant government, media, and subject matter experts on social media sites in order to use search tools under established criteria and search terms for monitoring that supports providing situational awareness and establishing a common operating picture. Furthermore, PII on the following categories of individuals may be collected when it lends credibility to the

report or facilitates coordination with federal, state, local, tribal, territorial, foreign, or international government partners: (1) U.S. and foreign individuals in extremis situations involving potential life or death circumstances; (2) Senior U.S. and foreign government officials who make public statements or provide public updates; (3) U.S. and foreign government spokespersons who make public statements or provide public updates; (4) U.S. and foreign private sector officials and spokespersons who make public statements or provide public updates; (5) names of anchors, newscasters, or on-scene reporters who are known or identified as reporters in their post or article or who use traditional and/or social media in real time to keep their audience situationally aware and informed; (6) public officials, current and former, who are victims of a transportation accident or attack and; (7) known terrorists, drug cartel leaders or other persons known to have been involved in major crimes or terror of Homeland Security interest, (e.g., mass shooters such as those at Virginia Tech or Ft. Hood) who are killed or found dead.

The NOC will identify and monitor only information needed to provide situational awareness and establish a common operating picture. The NOC will use this information to fulfill the statutory mandate set forth above to include the sharing of information with foreign governments and the private sector as otherwise authorized by law.

DHS is authorized to implement this program primarily through 6 U.S.C. 121; 44 U.S.C. 3101; Executive Order (E.O.) 13388; OPS Delegation 0104; and Homeland Security Presidential Directive 5.

This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse homeland security information coming into and going out of OPS, including the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate federal, state, tribal, local, international, foreign agency, or other appropriate entity including the privacy sector in their role aiding OPS in their mission; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Consistent with DHS's information sharing mission, information contained in the DHS/OPS—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will take place only after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/OPS—004 Publicly Available Social Media Monitoring and Situational Awareness Initiative System of records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS DHS/OPS—004

SYSTEM NAME:

Publicly Available Social Media Monitoring and Situational Awareness Initiative System of Records.

SECURITY CLASSIFICATION:

Unclassified, For Official Use Only, Law Enforcement Sensitive, and Classified.

SYSTEM LOCATION:

Records are maintained at the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS) National Operations Center (NOC) Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system may include:

- U.S. and foreign individuals in extremis situations involving potential life or death circumstances;
- Senior U.S. and foreign government officials who make public statements or provide public updates;
- U.S. and foreign government spokespersons who make public statements or provide public updates;
- U.S. and foreign private sector officials and spokespersons who make public statements or provide public updates;
- Names of anchors, newscasters, or on-scene reporters who are known or identified as reporters in their post or article or who use traditional and/or social media in real time to keep their audience situationally aware and informed;
- Current and former public officials who are victims of incidents or activities related to Homeland Security; and
- Known terrorists, drug cartel leaders or other persons known to have been involved in major crimes or terror of Homeland Security interest, (e.g., mass shooters such as those at Virginia Tech or Ft. Hood) who are killed or found dead.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system may include:

- Full name;
- Affiliation;
- Position or title; and
- Publically available user ID.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 121; 44 U.S.C. 3101; Executive Order (E.O.) 13388; OPS Delegation 0104; and Homeland Security Presidential Directive 5.

PURPOSE(S):

The NOC will use this Initiative to fulfill its statutory responsibility to provide situational awareness and establish a common operating picture for the entire federal government, and for state, local, and tribal governments as appropriate, and to ensure that critical disaster-related information reaches government decisionmakers. Information may also be shared with private sector and international partners where necessary, appropriate, and authorized by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

H. To the entire federal government, to state, local, and tribal governments, and to appropriate private sector individuals within the Critical Infrastructure Key Resources Community to provide situational awareness and establish a common operating picture and to ensure that critical disaster-related information reaches government decision makers when the personal identifiable information (PII) lends credibility to the report or facilitates coordination with interagency or international partners.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, some personal information may be captured. Most information is stored as free text and any word, phrase, or number is searchable.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

OPS is working with the DHS Records Officer to develop a NARA approved retention schedule for 5 years.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Operations Coordination and Planning, National Operations Center, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to OPS FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals, other federal, state, local and tribal agencies and organizations, domestic and foreign media, including periodicals, newspapers, and broadcast transcripts, public and classified data systems, reporting individuals, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: January 7, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–2198 Filed 1–31–11; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–29]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2010 Service Coordinators in Multifamily Housing.

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its website of the applicant information, submission deadlines, funding criteria, and other requirements for the HUD's Fiscal Year (FY) 2010 Service Coordinators in Multifamily Housing NOFA. This NOFA announces the availability of $31 million in Fiscal Year (FY) 2010 funding for the employment and support of Service Coordinators in insured and assisted housing properties that were designed for the elderly or nonelderly persons with disabilities and continue to operate as such. Service coordinators help residents obtain supportive services from the community that are needed to enable independent living and aging in place.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 14.191. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: January 27, 2011

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–2169 Filed 1–31–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N017; 41910–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Crosspoint Presbyterian Church, Lake County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the (Applicant) for an incidental take permit (ITP) #TE30950A–0 for 5 years under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and accompanying proposed habitat conservation plan (plan), as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by March 3, 2011.

ADDRESSES: If you wish to review the application and HCP, you may request documents by U.S. mail, e-mail, or phone (*see* below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

E-mail: northflorida@fws.gov. Use "Attn: Permit number TE30950A–0" as your message subject line.

Fax: Field Supervisor, (904) 731–3045, Attn.: Permit number TE30950A–0.

U.S. mail: Field Supervisor, Jacksonville Ecological Services Field

Office, Attn: Permit number TE30950A–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, telephone: (904) 731–3121, e-mail: *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The applicant is requesting take of approximately 1.3 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a church, and seeks a 5-year permit. The 4.93-ac project is located on parcel # 09–23–26–00030000–2100 within Section 09, Township 23 South, Range 26 East, Lake County, Florida. The project includes construction of a church and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 2.6 mitigation credits within the Morgan Lake Wales Preserve.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the plan and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue ITP #TE30950A–0. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: January 25, 2011.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2011–2161 Filed 1–31–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY930000–L16100000–DS0000]

Notice of Intent To Prepare a Resource Management Plan for the Rock Springs Field Office, Wyoming and Associated Environmental Impact Statement and Call for Coal Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (FLPMA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM), Rock Springs Field Office (RSFO), Rock Springs, Wyoming, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The BLM is also soliciting resource information for coal and other resources for the planning area. The Rock Springs RMP will replace the existing Green River RMP (1997).

DATES: This notice initiates the public scoping process for the RMP and associated EIS. Comments on issues may be submitted in writing until April 4, 2011 A series of public scoping meetings will be held in Rock Springs, Farson, and Lyman, Wyoming. The meeting times and addresses will be announced through the local news media, newsletters, mailings, and the BLM Web site at *http://www.blm.gov/wy/st/en/programs/Planning/rmps/RockSprings.html* at least 15 days prior to the event. In order to be included in the Draft RMP/EIS, all comments must be received prior to the close of the scoping period or 30 days after the last public scoping meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft RMP/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Rock Springs RMP/EIS by any of the following methods: *Web site: http://www.blm.gov/wy/st/en/programs/Planning/rmps/RockSprings.html; E-mail: RockSpringsRMP_WY@blm.gov; Fax:* (307) 352–0218; or *Mail:* 280 Hwy 191 North, Rock Springs, Wyoming 82901.

Documents pertinent to this proposal may be examined at the BLM RSFO, during regular business hours 7:30 a.m.

to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information or to have your name added to the project mailing list, contact Vera-Lynn Harrison, Project Manager, at (307) 352–0259 or *Vera_Harrison@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM RSFO intends to prepare an RMP with an associated EIS for the Rock Springs planning area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area includes portions of Lincoln, Sweetwater, Uinta, Sublette, and Fremont counties in southwestern Wyoming. The Rock Springs RMP decision area includes public lands administered by the BLM RSFO and encompasses approximately 3.6 million acres of surface land and 3.5 million acres of mineral estate. The decision area excludes private, State, tribal trust, or other Federal lands or subsurface mineral estates not administered by the BLM.

The purpose of the public scoping process is to identify issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues have been identified by BLM personnel through an interdisciplinary process and include, but are not limited to: cultural and historic resources, Native American concerns, energy and minerals development, renewable energy and associated transmission infrastructure, fire and fuels management, lands and realty actions, paleontological resources, recreation management, special designations, lands with wilderness characteristics and Wild Lands, vegetation management, livestock grazing/rangeland management, visual resources concerns, soil and water management, wildlife habitat management including protection of sensitive species habitat, healthy landscapes initiative, air quality and global climate change, wild horse and burro management, and the economic effects of BLM actions. Additional identified BLM management concerns include: drought management, forest resources, invasive species/noxious weeds, public safety, and the wildland-urban interface.

Preliminary planning criteria include: (1) The RSFO RMP revision will comply with FLPMA and all other applicable laws, regulations, and policies; (2) The RSFO RMP revision will analyze impacts from all alternatives in accordance with regulations at 43 CFR part 1610 and 40 CFR part 1500; (3) Decisions in the RSFO plan revision will only apply to public lands and the mineral estate managed by the BLM; (4) The revision process will follow the Land Use Planning Handbook H–1601–1; (5) The planning process will include broad-based public participation; (6) The revision process will consider management of lands with wilderness characteristics and designation of Wild Lands; and (7) Revised RSFO planning decisions will consider and incorporate existing plans and policies of adjacent local, State, Federal, and tribal agencies to the extent consistent with Federal law and regulations applicable to public lands. Parties interested in leasing and developing Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR part 3461. This information will be used for any necessary updating of coal screening determinations in the planning area. The coal screening process is described in 43 CFR 3420.1–4.

Proprietary data marked as confidential may be submitted in response to this call for coal information. Please submit all proprietary information submissions to the address listed above. The BLM will treat submissions marked as "Confidential" in accordance with applicable laws and regulations governing the confidentiality of such information. Public participation will be encouraged throughout the process. The BLM will collaborate and build relationships with tribes, State and local governments, Federal agencies, local stakeholders, and others within the community of interest for the RMP. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the scoping period or within 30 days after the last public meeting, whichever is later. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

The BLM will evaluate identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved by the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues that are beyond the scope of this plan.

The BLM will explain in the RMP Draft EIS why issues are placed in categories two or three. The public is also encouraged to identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with the interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Threatened and endangered species, wildlife, air resources, vegetation, riparian and wetlands, soils, invasive and noxious weeds, rangeland management, fire ecology and management, cultural resources and Native American concerns, hydrology, geology and minerals, lands and realty, recreation, visual resource management, public safety, law enforcement, and geographic information systems.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Donald A. Simpson,

State Director.

[FR Doc. 2011–2201 Filed 1–31–11; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–001]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 7, 2011 at 11 a.m.

PLACE: Room 110, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–474 and 731–TA–1176 (Final) (Drill Pipe and Drill Collars from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before February 17, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 24, 2011.

William R. Bishop

Hearings and Meetings Coordinator.

[FR Doc. 2011–2230 Filed 1–28–11; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–002]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 9, 2011 at 11 a.m.

PLACE: Room 110, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1071 and 1072 (Review)(Magnesium from China and Russia). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before February 23, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 24, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–2231 Filed 1–28–11; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 24, 2011, a proposed Consent Decree ("Decree") in *United States* v. *The United Illuminating Company and The Fitchburg Gas and Electric Light Company,* Civil Action No. 11–cv–121, was lodged with the United States District Court for the District of Connecticut.

The Decree resolves claims of the United States against The United Illuminating Company ("United Illuminating") and The Fitchburg Gas and Electric Light Company ("FG&E") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601–9675, for recovery of costs incurred by the United States Environmental Protection Agency ("EPA") related to the East Main Street Disposal Area Site in New Haven County, Connecticut ("Site"). The Decree requires United Illuminating and FG&E to pay $464,000 to the United States in reimbursement of costs incurred by EPA at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *The United Illuminating Company and The Fitchburg Gas and Electric Light Company,* Civil Action No. 11–cv–121 (D.Conn.) D.J. Ref. 90–11–3–09917.

The Decree may be examined at the Office of the United States Attorney, District of Connecticut, New Haven Office, 157 Church Street, Floor 23, New Haven, Connecticut 06510, and at U.S. EPA Region I, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109. During the public comment period, the Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–2180 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on January 26, 2011, a proposed Consent Decree was lodged with the District Court of the Virgin Islands, Division of St. Croix, in *United States et al.* v. *HOVENSA L.L.C.,* Civil Action No. 1:11–cv–6.

The Consent Decree in this Clean Air Act enforcement actions against HOVENSA L.L.C. resolves allegations by the Environmental Protection Agency, asserted in a complaint filed together with the Consent Decree, under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged environmental violations at HOVENSA L.L.C.'s petroleum refinery in St. Croix, United States Virgin Islands. The proposed Consent Decree also resolves separate but related territorial law claims brought by co-plaintiff the United States Virgin Islands.

This is one of numerous national settlements reached as part of the EPA's Clean Air Act Petroleum Refinery Initiative. Consistent with the objectives of EPA's national initiative, in addition to the payment of civil penalties, the settlement requires HOVENSA L.L.C. to perform injunctive relief to reduce emissions of nitrogen oxides, sulfur dioxide, volatile organic compounds, and benzene.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matters as *United States et al.* v.

HOVENSA L.L.C, DOJ Ref. No. 90–5–2–1–08229/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 5500 Veterans Drive, Room 260, St. Thomas, Virgin Islands 00802 and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866.

During the public comment period, the proposed agreements may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting from the Consent Decree Library a copy of the consent decree for *United States et al.* v. *HOVENSA L.L.C.,* Civil Action No. 1:11–cv–6, please enclose a check in the amount of $45.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–2080 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on December 16, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ipsen Biomeasure Incorporated, Actoh, MA; Inchi Trust, Silver Spring, MD; and Omixon, Nyul, HUNGARY, have been added as parties to this venture. Also, Symyx, Sunnyvale, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on September 27, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 26, 2010 (75 FR 65656).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–2070 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on December 20, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. ("NCOIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, EAE Systems North America, Inc., Rockville, MD; Rockwell Collins, Cedar Rapids, IA; ITT Corporation, White Plains, NY; Innovative Concepts, Inc., McLean, VA; Maritime Technology Centre R&D Institute, Gdynia, POLAND; Solera Networks, Lindon, UT; and Dataline, LLC, McLean, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on September 23, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 25, 2010 (75 FR 65511).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–2059 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Production Act of 1993—Open Axis Group, Inc.

Notice is hereby given that, on December 27, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Axis Group, Inc. ("Open Axis") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tripit, Inc., San Francisco, CA; LUTE, Zug, SWITZERLAND; Traveldata Inc., Shibua-ku, Tokyo, JAPAN; Frontier Airlines, Indianapolis, IN; Navitaire, Minneapolis, MN; Travelguard Worldwide, Inc., Jersey City, NJ; SkyScanner LTD, Edinburgh, UNITED KINGDOM; Motocol LLC, Greenwood Village, CO; and Flightview, Allston, MA, have been added as parties to this venture. Also, Mobiata, Ann Arbor, MI, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Axis intends to file additional written notifications disclosing all changes in membership.

On October 6, 2010, Open Axis filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on November 16, 2010 (75 FR 70031).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–2073 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0002]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Revision of a currently approved collection; Supplementary Homicide Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 4, 2011.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional Law Enforcement Officers Killed and Assaulted information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

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: DOJ 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 [1110–0002]. Also include the DOJ docket number found in brackets in the heading of this document.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, 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 of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Supplementary Homicide Report

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1–702; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on law enforcement officers killed or assaulted in the line of duty throughout the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,985 law enforcement agency respondents that submit monthly for a total of 215,820. responses with an estimated response time of 9 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 32,373 hours, annual burden, associated with this information collection.

If Additional Information Is Required Contact: Mrs. Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: January 26, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–2092 Filed 1–31–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Availability of the Environmental Assessment for the Short Term Sentences Acquisition

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Public Comment on Environmental Assessment.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Environmental Assessment (EA) prepared for the proposed contract to secure additional inmate bed space for the BOP's growing inmate population.

As part of an initiative known as the Criminal Alien Requirement, the BOP has identified a specific requirement to confine a population of approximately 3,000 low-security adult male inmates (with one year or less remaining to serve) that are primarily criminal aliens. The BOP is seeking to reduce prison overcrowding by requesting additional contract beds.

In accordance with the National Environmental Policy Act (NEPA) of 1969, the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), and the Department of Justice procedures for implementing NEPA (28 CFR part 61), the BOP has prepared an EA to evaluate the proposed action of contracting with one or more private contractors to house approximately 3,000 federal, low-security, adult male, criminal aliens at one or more privately owned and operated correctional facility(s).

The BOP's EA evaluates the potential environmental consequences of three action alternatives and the No Action Alternative. Natural, cultural, and socioeconomic resource impacts associated with the implementation of the proposed action at each of the proposed alternative locations were analyzed to determine how these resources may be affected by the proposed action.

The alternatives considered in the EA include the use of the following privately-owned and operated facilities: Diamondback Correctional Center, Watonga, Oklahoma; Great Plains Correctional Facility, Hinton, Oklahoma; and Willacy County

Processing Center, Raymondville, Texas. Inmates housed in these facilities would be criminal aliens who have less than one year remaining to serve of their sentences.

Request For Comments

The BOP invites your participation and is soliciting comments on the EA. The EA will be the subject of a 30-day comment period which begins January 28, 2011 and ends February 28, 2011. Comments concerning the EA and the proposed action must be received during this time to be assured consideration. All written comments received during this review period will be taken into consideration by the BOP. Copies of the EA are available for public viewing at: Watonga Public Library 301 N. Prouty, Watonga, OK; Norman Smith Memorial Library, 115 E. Main St., Hinton, OK; and Reber Memorial Library, 193 N. 4th St., Raymondville, Texas.

The EA is available upon request. To request a copy of the EA, please contact: Richard A. Cohn, Chief, or Issac J. Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 Tel: 202–514–6470, Fax: 202–616–6024/E-mail: *racohn@bop.gov* or *igaston@bop.gov.*

FOR FURTHER INFORMATION CONTACT: Richard A. Cohn, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: January 20, 2011.

Issac J. Gaston,

Site Specialist, Capacity Planning and Site Selection Branch.

[FR Doc. 2011–1817 Filed 1–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Office of Federal Contract Compliance Programs Complaint Form

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Office of Federal Contract Compliance Programs (OFCCP) sponsored information collection request (ICR) titled, "Office of Federal Contract Compliance Programs Complaint Form," to the Office of Management and Budget (OMB) for review and approval for continued use, as revised, 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 March 3, 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, Office of Federal Contract Compliance Programs (OFCCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is used to obtain information from persons who allege illegal discrimination by Federal contractors under any program the OFCCP administers. The OFCCP uses Form CC–4 to collect the information.

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 1250–0002. 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 November 19, 2010 (75 FR 70948).

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 1250–0002. 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: Office of Federal Contract Compliance Programs (OFCCP).

Title of Collection: Office of Federal Contract Compliance Programs Complaint Form.

OMB Control Number: 1250–0002.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 602.

Total Estimated Number of Responses: 602.

Total Estimated Annual Burden Hours: 771.

Total Estimated Annual Costs Burden: $283.

Dated: January 26, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–2153 Filed 1–31–11; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; YouthBuild Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission

of the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "YouthBuild Reporting System," 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 March 3, 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: 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: YouthBuild grantees collect and report selected standardized information pertaining to customers in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. The ETA provides all grantees with a YouthBuild management information system to use for collecting participant data and for preparing and submitting the required quarterly reports.

The YouthBuild Reporting System is an information collection subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0464. 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 15, 2010 (75 FR 56140).

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 1205–0464. 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).

Title of Collection: YouthBuild Reporting System.

OMB Control Number: 1205–0464.

Affected Public: Private sector—not for profit institutions.

Total Estimated Number of Respondents: 220.

Total Estimated Number of Responses: 7815.

Total Estimated Annual Burden Hours: 38,983.

Total Estimated Annual Costs Burden: $0.

Dated: January 27, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–2154 Filed 1–31–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Storage and Handling of Anhydrous Ammonia

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Storage and Handling of Anhydrous Ammonia," 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 March 3, 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, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–4816/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: The markings required by the Storage and Handling of Anhydrous Ammonia information collection help ensure that employers use only properly designed and tested containers and systems to store anhydrous ammonia, thereby, preventing accidental release of, and exposure of workers to, this highly toxic and corrosive substance.

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 1218–0208. 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 November 18, 2010 (75 FR 70687).

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 1218–0208. 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: Occupational Safety and Health Administration (OSHA).

Title of Collection: Storage and Handling of Anhydrous Ammonia.

OMB Control Number: 1218–0208.

Affected Public: Private sector—businesses or other for-profits and farms.

Total Estimated Number of Respondents: 2030.

Total Estimated Number of Responses: 2030.

Total Estimated Annual Burden Hours: 345.

Total Estimated Annual Costs Burden: $0.

Dated: January 27, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–2155 Filed 1–31–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Public Availability of Department of Labor FY 2010 Service Contract Inventory

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Notice of public availability of FY 2010 service contract inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Labor 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 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.* The Department of Labor has posted its inventory and a summary of the inventory on the agency's Web site at the following link: *http://www.dol.gov/dol/aboutdol/main.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Brent Goe in the Office of Acquisition Management Services at (202) 693–7266 or *goe.brent2@dol.gov.*

Dated: January 27, 2011.

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. 2011–2211 Filed 1–27–11; 4:15 pm]

BILLING CODE 4510–23–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0021]

Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission, NRC, or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-

issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866- 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Power Station, Units 2 and 3, New London County, Connecticut

Date of amendment request: July 12, 2010, as supplemented by letter dated August 5, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The licensee proposed an amendment to the Facility Operating Licenses for Millstone Power Station, Units 2 and 3 (MPS2 and MPS3, respectively). This amendment request pertains to the MPS2 and MPS3 Cyber Security Plans. In the same amendment request letter, sent under Dominion Resources Services, Inc. (DRC) letterhead, Kewaunee Power Station, Surry Power Station Units 1 and 2, and North Anna Power Station Units 1 and 2, submitted amendment requests pertaining to their Cyber Security Plans. This notice only addresses the application as it pertains to MPS2 and MPS3. The licensee requested NRC approval of the MPS2 and MPS3 Cyber Security Plan, provided a proposed implementation schedule, and proposed to add a sentence to License Condition

2.C.4, "Physical Protection," of MPS2, Facility Operating License (FOL) DPR–65 and to License Condition 2.E, of MPS3, FOL NPF–49, that would affirm when the licensee would fully implement and maintain in effect all provisions of the Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's NSHC analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Plan establishes the licensing basis for the Cyber Security Program for the sites. The Plan establishes how to achieve high assurance that specified nuclear power plant digital computer and communication systems, networks and functions are adequately protected against cyber attacks up to and including the design basis threat.

Part one of the proposed change is designed to achieve high assurance that the systems are protected from cyber attacks. The Plan describes how plant modifications that involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the requirement are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated. The proposed change implements a Cyber Security Plan as a requirement not formally addressed previously. As such, the proposed Plan provides a significant enhancement to cyber security where no requirement existed before.

The second part of the proposed change adds a sentence to the existing facility license conditions for Physical Protection. These changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related structures, systems and components (SSCs) are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need of any new or different design-basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc.,

120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois Docket Nos. STN 50–454 and 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of amendment request: December 14, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tubes within the tubesheet from periodic SG inspections and plugging or repair. In addition, this amendment request proposes to revise TS 5.6.9, "Steam Generator (SG) Tube Inspection Report," to remove reference to previous interim alternate repair criteria and provide reporting requirements specific to the temporary alternate criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator (SG) inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR), postulated steam line break (SLB), feedwater line break (FLB), locked rotor and control rod ejection accident evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model D5 SGs has shown that axial loading of the tubes is negligible during an SSE.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in draft Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," and TS 5.5.9, are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and

leakage integrity of the SG tubes consistent with the performance criteria of TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a SGTR.

Primary-to-secondary leakage from tube degradation in the tubesheet area during operating and accident conditions is restricted due to contact of the tube with the tubesheet. The leakage is modeled as flow through a porous medium through the use of the Darcy equation. The leakage model is used to develop a relationship between operational leakage and leakage at accident conditions that is based on differential pressure across the tubesheet and the viscosity of the fluid. A leak rate ratio was developed to relate the leakage at operating conditions to leakage at accident conditions. Since the fluid viscosity is based on fluid temperature and it is shown that for the most limiting accident, the fluid temperature does not exceed the normal operating temperature and therefore the viscosity ratio is assumed to be 1.0. Therefore, the leak rate ratio is a function of the ratio of the accident differential pressure and the normal operating differential pressure.

The leakage factor of 1.93 for Braidwood Station Unit 2 and Byron Station Unit 2, for a postulated SLB/FLB, has been calculated as shown in Table 9–7 of WCAP–17072–P. However, EGC Braidwood Station Unit 2 and Byron Station Unit 2 will apply a factor of 3.11 as determined by Westinghouse evaluation LTR–SGMP–09–100 P–Attachment, Revision 1, to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). The leakage factor of 3.11 applies specifically to Byron Unit 2 and Braidwood Unit 2, both hot and cold legs, in Table RAI24–2 of LTRSGMP–09–100 P–Attachment, Revision 1. Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. The assumed accident induced leak rate limit is 0.5 gallons per minute at room temperature (gpmRT) for the faulted SG and 0.218 gpmRT for the unfaulted SGs for accidents that assume a faulted SG. These accidents are the SLB and the locked rotor with a stuck open PORV. The assumed accident induced leak rate limit for accidents that do not assume a faulted SG is 1.0 gpmRT for all SGs. These accidents are the locked rotor and control rod ejection.

No leakage factor will be applied to the locked rotor or control rod ejection transients due to their short duration, since the calculated leak rate ratio is less than 1.0.

The TS 3.4.13 operational leak rate limit is 150 gallons per day (gpd) (0.104 gpmRT) through any one SG. Consequently, there is sufficient margin between accident leakage and allowable operational leakage. The maximum accident leak rate ratio for the Model D5 design SGs is 1.93 as indicated in WCAP–1 7072–P, Table 9–7. However, EGC will use the more conservative value of 3.11 accident leak rate ratio for the most limiting SG model design identified in Table RA124–2 of LTR–SGMP–09–100 P–Attachment Revision 1. This results in significant margin between the conservatively estimated accident leakage and the allowable accident leakage (0.5 gpmRT).

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 3.11 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 3.11 and compared to the observed operational leakage.

Based on the above, the performance criteria of NEI–97–06, Revision 2, and draft RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of the applicable accidents previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the permanent alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change defines the safety significant portion of the SG tube that must be inspected and repaired. WCAP–17072–P as modified by WCAP–1 7330–P identifies the specific inspection depth below which any type tube degradation has no impact on the performance criteria in NEI 97–06, Revision 2, "Steam Generator Program Guidelines."

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. NEI 97–06, and draft RG 1.121 are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. Draft RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. Draft RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This draft RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, WCAP–1 7072–P as modified by WCAP–17330–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage as described in WCAP–17072–P as modified by LTRSGMP–09–100 P–Attachment shows that significant margin exists between an acceptable level of leakage during normal operating conditions that ensures meeting the SLB accident-induced leakage assumption and the TS leakage limit of 150 gpd.

Based on the above, it is concluded that the proposed changes do not result in any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert D. Carlson.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit 1, DeWitt County, Illinois

Date of amendment request: September 23, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify the CPS Technical Specifications (TS) Limiting

Condition for Operation (LCO) 3.7.6, "Main Turbine Bypass System," by allowing revision of the reactor operational limits, as specified in the CPS Core Operating Limits Report (COLR), to compensate for the inoperability of the Main Turbine Bypass System (MTBS). The revised TS will require that either the MTBS be OPERABLE or that the reactor power, Minimum Critical Power Ratio (MCPR), and Linear Heat Generation Rate (LHGR) limits for an inoperable MTBS be placed in effect as specified in the COLR. Additionally, the amendment proposes modifying TS 5.6.5, "Core Operating Limits Report (COLR)," to add a requirement to establish cycle dependent reactor thermal power limits for an inoperable MTBS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The MTBS functions to limit reactor pressure and power increases during certain transients postulated in the accident analysis. The MTBS is a mitigation function and not the initiator of any evaluated accident or transient. Operation with an inoperable MTBS while in compliance with the imposed reactor power limitation, and MCPR and LHGR limits will offset the impact of losing the MTBS function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not create any new modes of plant or equipment operation. The proposed change allows the option to apply a reactor power penalty and an additional penalty factor to the MCPR and LHGR when the MTSS is inoperable. The imposed reactor power limitation and the revised set of MCPR and LHGR limits will offset the impact of losing the MTBS function, and maintain the margin to the MCPR safety limit and the thermal mechanical design limits.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

By establishing more restrictive reactor power and MCPR and LHGR operating limits, there are no changes to the plant design and safety analysis. There are no changes to the reactor core design instrument setpoints. The margin of safety assumed in the safety analysis is not affected. Applicable regulatory requirements will continue to be met and adequate defense-in-depth will be maintained. Sufficient safety margins will be maintained.

The analytical methods used to determine the reactor power limitation and the revised core operating limits were reviewed and approved by the NRC and are described in Technical Specification 5.6.5, "Core Operating Limits Report (COLR)."

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert D. Carlson.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of amendment request: October 4, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specification (TS) Table 3.3.1.1 to eliminate Functions 5 and 10 from TS Table 3.3.1.1–1, delete footnote (c) from that table, and rename the footnote (d) to (c). These revisions would eliminate the requirement for a reactor scram, if vessel pressure is greater than or equal to 600 pounds per square inch gage (psig), with the reactor mode switch in startup and the main steam isolation valves closed or with a main turbine condenser vacuum low condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the DNPS Units 2 and 3 TS revise the applicability of two protective functions and delete the associated TS Action statement. TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Specifically, the reactor scram associated with the main steam isolation valve (MSIV) closure and low condenser vacuum (i.e., Functions 5 and 10 of TS 3.3.1.1) is in anticipation of the loss of the normal heat sink and subsequent overpressurization transient. The scram at high pressure in startup conditions when MSIVs close and/or main condenser vacuum is low does not impact the limiting accident or transient analyses. An analysis by General Electric Hitachi Nuclear Energy (GEH) demonstrated that the Mode 2 scram function for MSIV closure and low condenser vacuum can be eliminated without affecting safe plant operation. Elimination of these required scrams will not involve an increase in the probability of an accident previously evaluated.

Additionally, these proposed changes will not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis.

Function 5 is currently required in Mode 2 with reactor pressure greater than or equal to 600 psig to ensure that the reactor is shut down, thus helping to prevent an overpressurization transient due to closure of main steam isolation valves. Similarly, Function 10 is currently required in Mode 2 with reactor pressure greater than or equal to 600 psig to help prevent an overpressurization transient by anticipating the turbine stop valve closure scram on loss of condenser vacuum.

The existing scram logic is the result of experience gained during startup of an early vintage bailing water reactor in 1966 when operators had difficulty controlling reactor power above approximately 600 psig without pressure control. Experience on later plant startups indicates that the early experience may not be inherent to later boiling water reactor designs. As such, GEH subsequently recommended elimination of the Mode 2 scram requirement.

In Mode 2, the heat generation rate is low enough so that the other diverse Reactor Protection System (RPS) functions provide sufficient protection from an overpressurization transient. During normal power ascension in Mode 2 with the MSIVs open, reactor pressure vessel (RPV) pressure is controlled by the pressure regulator with increasing pressure setpoints. The maximum pressure regulator setpoint, which would translate to 1000 psig at rated power, would only allow a maximum dome pressure of approximately 900 psig in the Mode 2 power range. The potential scenario in Mode 2 whereby the MSIVs would close unexpectedly and cause the pressure to increase would lead to the Average Power Rate Monitors, Neutron Flux-High, Setdown scram (i.e., TS 3.3.1.1, Function 2.a), followed by the Reactor Vessel Steam Dome Pressure-High scram (i.e., TS 3.3.1.1, Function 3).

The consequences of a previously analyzed event are dependent on the initial conditions

assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The consequences of a previously evaluated accident are not significantly increased by the proposed change. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the DNPS Units 2 and 3 TS revise the applicability of two protective functions and delete the associated TS Action statement. The RPS functions are not an initiator of any accident. Rather, the RPS is designed to initiate a reactor scram when one or more monitored parameters exceed their specified limits to preserve the integrity of the fuel cladding and the reactor coolant pressure boundary and minimize the energy that must be absorbed following an accident. The proposed changes do not alter the applicability for RPS functions during plant conditions in which an overpressurization transient is assumed to occur. Specifically, no changes are being made to the required number of channels per trip system, surveillance requirements, or allowable values for these functions during Mode 1 operation.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not change or introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed changes revise the applicability for Functions 5 and 10 of TS 3.3.1.1 and delete an associated TS Action Statement. The proposed changes do not alter the applicability for RPS functions during plant conditions in which an overpressurization transient is assumed to occur.

In addition, the proposed changes do not affect the probability of failure or availability of the affected instrumentation. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures.

The proposed changes to the applicability for Functions 5 and 10 of TS 3.3.1.1 have no impact on equipment design or fundamental operation. There are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety. The performance of the systems important to safety is not significantly affected by the proposed changes. The proposed change does not affect safety analysis assumptions or initial conditions and therefore, the margin of safety in the original safety analyses is maintained.

As documented above, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert. D. Carlson.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: December 15, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes revise the Technical Specification (TS) relating to the Safety Limit Minimum Critical Power Ratios (SLMCPRs). The changes result from a cycle-specific analysis performed to support the operation of Limerick Generating Station, Unit 2, in the upcoming Cycle 12. Specifically, the proposed TS changes will revise the SLMCPRs contained in TS 2.1 for two recirculation loop operation and single recirculation loop operation to reflect the changes in the cycle-specific analysis. The new SLMCPRs are calculated using Nuclear Regulatory Commission (NRC)-approved methodology described in NEDE 24011–P–A, "General Electric Standard Application for Reactor Fuel," Revision 17.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel," Revision 17.

The basis of the SLMCPR calculation is to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling.

The MCPR [minimum critical power ratio] safety limit is reevaluated for each reload using NRC-approved methodologies. The analyses for Limerick Generating Station (LGS), Unit 2, Cycle 12 have concluded that a two loop MCPR safety limit of ≥1.09, based on the application of Global Nuclear Fuel's NRC-approved MCPR safety limit methodology, will ensure that this acceptance criterion is met. For single-loop operation, a MCPR safety limit of ≥1.12 also ensures that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the LGS, Unit 2 Core Operating Limits Report (COLR).

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The SLMCPR is a TS numerical value, calculated to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel," Revision 17. The proposed changes do not involve any new modes of operation or any plant modifications. The proposed revised MCPR safety limits have been shown to be acceptable for Cycle 12 operation. The core operating limits will continue to be developed using NRC-approved methods. The proposed MCPR safety limits or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs. The new SLMCPRs are calculated using methodology discussed in NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel," Revision 17. The SLMCPRs ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 16, 2010, as supplemented by letters dated September 28, and November 23, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment to the Facility Operating License (FOL) includes: (1) The proposed Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS) Cyber Security Plan (the Plan), (2) an implementation schedule, and (3) revise the existing FOL Physical Protection license condition to require the FirstEnergy Nuclear Operating Company (FENOC, the licensee) to fully implement and maintain in effect all provisions of the Commission approved Cyber Security Plan as required by Title 10 of the Code of Federal Regulations (10 CFR) 73.54.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the DBNPS. The Plan establishes the licensing basis for the FENOC cyber security program for the DBNPS. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,
2. Security functions,
3. Emergency preparedness functions including offsite communications, and
4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems are protected from cyber attacks. The Plan itself does not require any plant modifications. However, the Plan does describe how plant modifications which involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat as defined in the rule.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, affect the function of plant systems, or affect the manner in which systems are operated. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.D for Physical Protection. Both of these changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the DBNPS. The Plan establishes the licensing basis for the FENOC cyber security program for the DBNPS. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,
2. Security functions,
3. Emergency preparedness functions including offsite communications, and
4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks. The Plan itself does not require any plant modifications. However, the Plan does describe how plant modifications which involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat defined in the rule.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, affect the function of plant systems, or affect the manner in which systems are operated. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks and does not create the possibility of a new or different kind of accident from any previously evaluated.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.D for Physical Protection. Both of these changes are administrative and do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is required by 10 CFR 73.54 and includes three parts. The first part is the submittal of the Plan for NRC review and approval. The Plan provides a description of how the requirements of the rule will be implemented at the DBNPS. The Plan establishes the licensing basis for the FENOC cyber security program for the DBNPS. The Plan establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions,
2. Security functions,
3. Emergency preparedness functions including offsite communications, and
4. Support systems and equipment which if compromised, would adversely impact safety, security, or emergency preparedness functions.

Part one of the proposed change is designed to achieve high assurance that the systems within the scope of the rule are protected from cyber attacks. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety limits specified in

the Technical Specifications, methods of evaluation that establish design basis or change Updated Final Safety Analysis. Because there is no change to these established safety margins, the proposed change does not involve a significant reduction in a margin of safety.

The second part of the proposed change is an implementation schedule. The third part adds a sentence to the existing FOL license condition 2.D for Physical Protection. Both of these changes are administrative and do not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Robert. D. Carlson.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 1, 2010.

Brief description of amendments: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specification (TS) 5.5.9, "Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program," to exclude portions of the Unit 2 Model D5 steam generator (SG) tubes below the top of the SG tubesheet from periodic SG tube inspections during Comanche Peak Nuclear Power Plant (CPNPP), Unit 2 Refueling Outage 12 and the subsequent operating cycle. In addition, the proposed amendment would revise TS 5.6.9, "Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Report," to provide reporting requirements specific to CPNPP, Unit 2 for the temporary alternate repair criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the steam generator tube rupture (SGTR) event, the steam line break (SLB), and the feed line break (FLB) postulated accidents.

The required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in [NRC] Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes," and TS 5.5.9 are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the SG tubes consistent with the performance criteria in TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a[n] SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a[n] SGTR.

The probability of a[n] SLB is unaffected by the potential failure of a steam generator tube as the failure of tube is not an initiator for a[n] SLB event.

The leakage factor of 3.16 for CPNPP Unit 2, for a postulated SLB/FLB, has been calculated as described in Reference 8.29 [Westinghouse Letter LTR–SGMP–09–100P–Attachment, Revision 1, dated September 7, 2010] and is shown in Revised Table 9–7 of this same reference. Specifically, for the condition monitoring (CM) assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 3.16 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment (OA), the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 3.16 and compared to the observed operational leakage. The accident-induced leak rate limit for CPNPP Unit 2 is 1.0 gpm [gallons per minute]. The TS operational leak rate limit through any one steam generator is 150 gpd [gallons per day] (0.1 gpm). Consequently, there is significant margin between accident leakage and allowable operational leakage. The SLB/FLB overall leakage factor is 3.16 resulting in significant margin between the conservatively estimated accident induced leakage and the allowable accident leakage.

No leakage factor was applied to the locked rotor or control rod ejection transients due to their short duration.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the SG inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The proposed change that alters the steam generator inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, Rev. 2, "Steam Generator Program Guidelines," and NRC Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a[n] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and

consequences of a[n] SGTR are reduced. RG 1.121 uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) [Boiler and Pressure Vessel] Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the H* Analysis documented in Section 4.1 [Attachment 1 to letter dated December 1, 2010] defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 30, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Wolf Creek Generating Station's (WCGS's) Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tube below the top of the steam generator tubesheet from periodic steam generator tube inspections during Refueling Outage 18 and the subsequent operating cycle. In addition, the proposed amendment would revise TS 5.6.10, "Steam Generator Tube Inspection Report," to remove references to previous interim alternate repair criteria and provide reporting requirements specific to the temporary alternate repair criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the feedline break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the presence of the tubesheet and constraint provided by the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, from the differential pressure between the primary and secondary side, and tubesheet deflection. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes," and TS 5.5.9 are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the steam generator tubes consistent with the performance criteria in TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a[n] SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet joint. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed changes do not result in a significant increase in the consequences of a[n] SGTR.

The consequences of a steam line break (SLB) are also not significantly affected by the proposed changes. During a[n] SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (*i.e.,* an SLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.50 for WCGS, for a postulated SLB/FLB, has been calculated as shown in Revised Table 9–7 of Reference 15 [Westinghouse Letter LTR–SGMP–09–100, dated August 12, 2009]. Specifically, for the condition monitoring (CM) assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.50 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment (OA), the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.50 and compared to the observed operational leakage.

The probability of an SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for an SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 15.2 inches below the top of the tubesheet. The accident induced leak rate limit for WCGS is 1.0 gpm [gallon per minute]. The TS 3.4.13, "RCS [Reactor Coolant System] Operational LEAKAGE," operational leak rate limit is 150 gpd [gallons per day] (0.1 gpm) through anyone steam generator. Consequently, accident leakage is approximately 10 times the allowable leakage, if only one steam generator is leaking. Using an SLB/FLB overall leakage factor of 2.50, accident induced leakage is approximately 0.5 gpm, if all 4 steam generators are leaking at 150 gpd at the beginning of the accident. Therefore, significant margin exists between the conservatively estimated accident induced leakage and the allowable accident leakage (1.0 gpm).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change alters the steam generator inspection and reporting criteria. It does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change alters the steam generator inspection and reporting criteria. It maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI [Nuclear Energy Institute] 97–06, Revision 2, and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting GDC [General Design Criterion] 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a[n] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a[n] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) [Boiler and Pressure Vessel] Code. For axially-oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially-oriented cracking, the H* Analysis documented in Section 3 [of letter dated November 30, 2010], defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit 2 and 3, New London County, Connecticut

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 25th day of January 2011.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/Activity
>A + 60	Decision on contention admission.

[FR Doc. 2011–2027 Filed 1–26–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of January 31, February 7, 14, 21, 28, March 7, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 31, 2011

Tuesday, February 1, 2011

9 a.m.

Briefing on Digital Instrumentation and Controls (Public Meeting). (Contact: Steven Arndt, 301–415–6502).

This meeting will be Webcast live at the Web address *http://www.nrc.gov.*

Week of February 7, 2011—Tentative

Tuesday, February 8, 2011

9 a.m.

Briefing on Implementation of Part 26 (Public Meeting). (Contact: Shana Helton, 301–415–7198).

This meeting will be Webcast live at the Web address *http://www.nrc.gov.*

Week of February 14, 2011—Tentative

There are no meetings scheduled for the week of February 14, 2011.

Week of February 21, 2011—Tentative

Thursday, February 24, 2011

9 a.m.

Briefing on Groundwater Task Force (Public Meeting). (Contact: Margie Kotzalas, 301–415–1727).

This meeting will be Webcast live at the Web address *http://www.nrc.gov.*

Week of February 28, 2011—Tentative

Tuesday, March 1, 2011

9 a.m.

Briefing on Reactor Materials Aging Management Issues (Public Meeting). (Contact: Allen Hiser, 301–415–5650).

This meeting will be Webcast live at the Web address *http://www.nrc.gov.*

Week of March 7, 2011—Tentative

There are no meetings scheduled for the week of March 7, 2011.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: January 27, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–2258 Filed 1–28–11; 11:15 am]

BILLING CODE 7590–01–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, February 3, 2011 at 10 a.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 Aguilar, 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, February 3, 2011 will be:

Consideration of amicus participation;
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 27, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2228 Filed 1–28–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63776; File No. 0–49764]

Notice and Opportunity for Hearing: SinoFresh Healthcare, Inc.

January 26, 2011

Notice is hereby given that on November 1, 2010, SinoFresh Healthcare, Inc. (Applicant) filed with the Securities and Exchange Commission a Form 15 certification (Certification) pursuant to Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) for termination of the registration of the Applicant's common shares (no par value) under Section 12(g) of the Exchange Act. The

Certification is available via the Edgar database on the Commission's Web site at *http://www.sec.gov* or at the offices of the Commission in the 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.

Pursuant to Rule 12g–4 of the Exchange Act, termination of the registration of a class of securities under Section 12(g) of the Exchange Act shall take place 90 days, or such shorter period as the Commission may determine, after the Applicant certifies to the Commission on Form 15 that the class of securities is held of record by less than 300 persons or less than 500 persons where the total assets of the issuer have not exceeded $10 million on the last day of each of the Applicant's most recent three fiscal years. The Applicant's Certification declares that the Applicant has approximately 692 holders of record as of October 29, 2010. Based on the fact that the Applicant's Certification does not comply with the record holder requirements of Rule 12g–4 of the Exchange Act, the Applicant's request for termination should be denied.

Notice is further given that any interested person not later than February 16, 2011 may submit to the Commission in writing views on any substantial facts bearing on the certification or the utility of a hearing thereon. Submissions should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reason for such request, and the issues of facts and law raised by the certification which he desires to contest. Submissions may be made by any of the following methods:

Electronic Submissions

Send an e-mail to *rule-comments@sec.gov*. Please include File Number 0–49764 on the subject line.

Paper Submissions

Send paper submissions to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 0–49764. To help us process and review submissions more efficiently, please use only one method. The Commission will post all submissions on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Submissions are also available for public inspection and copying 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. All submissions received will be posted without change; we do not edit personal identifying information. You should submit only information that you wish to make available publicly.

Persons who request a hearing or submit views as to whether a hearing should be ordered will receive any notices and orders issued in this matter, including the date of any hearing ordered and any postponement thereof.

If a request for a hearing or other submissions are not received, the Commission may, at any time after February 16, 2011, issue an order denying termination of Applicant's registration. If the Commission receives information through submission which shows that the Applicant has met the requirements for filing a Form 15 certification, the Commission may issue either a notice of effectiveness or set this matter down for a hearing. Termination of registration shall be deferred pending final determination on the question of denial.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2126 Filed 1–31–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63770; File No. SR–NYSEArca–2010–106]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Regarding the Listing of Options Series with $1 Strike Prices

January 25, 2011.

I. Introduction

On November 24, 2010, NYSE Arca, Inc. ("NYSE Arca" or "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 the Exchange to modify the operation of the $1 Strike Price Program. The proposed rule change was published for comment in the **Federal Register** on December 13, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63462 (December 8, 2010), 75 FR 77689 ("Notice").

II. Description of the Proposal

The Exchange has proposed to amend Rule 6.4 Commentary .04 to modify the operation of the $1 Strike Price Program.

Currently, the $1 Strike Price Program allows the listing of new series with strikes at $1 intervals only if such series have strike prices *within $5 of the previous day's closing price in the primary listing market.*[4] The proposal would allow the Exchange also to: (a) List new series with $1 interval strike prices *within $5 of the official opening price in the primary listing market,* and (b) add $1 interval strike prices *between the closing price and the opening price,* regardless of whether such strikes are within $5 of the previous day's closing price or the day's opening price.

In support of allowing the listing of $1 interval strike between the closing and opening prices, the Exchange stated that, on occasion, the price movement in an underlying security has been so great that listing series with strikes within $5 of the previous day's closing price and the day's opening price would leave a gap in the continuity of strike prices. Thus, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes would be more than $5 from either benchmark. The Exchange proposed that any such discontinuity be avoided by allowing the listing of options on all $1 interval strike prices that fall between the previous day's closing price and the opening price.

The Exchange also has proposed to prohibit the listing of $2.50 interval strikes below $50 in all classes chosen for the $1 Strike Price Program, and in all long-term option series. According to the Exchange, this change is designed to eliminate discontinuities in strike prices and a lack of parallel strikes in different expiration months of the same issue. Currently, Exchange rules provide that the Exchange may not list series within $1 strike price intervals within $0.50 of an existing strike price in the same class, unless the class in question has been selected to participate in the $0.50 Strike Program.[5] In addition, Exchange rules currently stipulate that the Exchange may not list series with $1 strike price intervals for any long-term options (*i.e.,* options having greater than nine months to expiration) under the $1 Strike Price Program.[6]

[4] Rule 6.4 Commentary .04(a).

[5] *See id.*

[6] *See id.* The standard strike interval for Long-Term Equity Option Series (LEAPs) is $2.50 where the strike price is $25 or less. *See* Rule 6.4(f). However, under a separate provision of the rules, the Exchange may list $1 strike prices up to $5 in LEAPS in up to 200 option classes on individual

Continued

However, as the Exchange noted in its proposal, due to the prohibition on $1 strike price intervals within $0.50 of an existing strike price, the existence of series with $2.50 interval strikes for classes selected for the $1 Strike Price Program could lead to discontinuities in strike prices and a lack of parallel strikes in different expiration months of the same issue. For example, if a $12.50 strike series was open in a class selected for the $1 Strike Price Program, the Exchange would not be able to list series with a $12 or $13 strike, potentially resulting in sequence of strike prices at irregular intervals (*i.e.,* $10, $11, $12.50, $14, and $15).

To replace these now-forbidden $2.50 interval strikes, the Exchange proposes to allow the listing of one additional series within each natural $5 interval, as follows. The Exchange proposed to permit the listing of a series with a strike $2 *above* the $5-interval strike for each such $5-interval strike above the price of the underlying security at the time of listing. Conversely, the Exchange's proposal would permit the listing of a series with a strike $2 *below* the $5-interval strike for each such $5-interval strike below the price of the underlying security at the time of listing. For example, if the underlying security was trading at $19, the Exchange could list a $27 strike between the $25 and the $30 strikes, and a $32 strike between the $30 and $35 strikes; as well as a $13 strike between the $10 and $15 strikes, and an $8 strike between the $10 and $15 strikes. The Exchange also notes that each such additional series may be listed only if such listing is consistent with the Options Listing Procedures Plan ("OLPP") Provisions in Rule 6.4A.[7] The foregoing provisions would apply to all classes selected for the $1 Strike Price Program, both with respect to standard and long-term options. In addition, since series with $1-interval strikes are not permitted for most long-term options, the proposal would allow the Exchange to list the long-term strike that is $2 above the $5-interval just below the underlying price at the time of listing. For example, if the underlying security is trading at $21.25, this provision would allow the Exchange to add a $22 strike ($2 above the $20 strike) for the long-term option series.

In support of its proposal, the Exchange stated that the proposed rule change seeks to reduce investor confusion resulting from discontinuous strike prices that has arisen in the operation of the $1 Strike Price Program, by providing a consistent application of strike price intervals for issues in the $1 Strike Price Program.

The Exchange further represented that it has the necessary systems capacity to support the potential increase in new options series that will result from the proposed changes to the $1 Strike Price Program.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Exchange notes, the proposal is intended to reduce investor confusion resulting from the operation of the $1 Strike Price Program by reducing the occurrences of discontinuities in strike prices and non-parallel strikes in different expiration months of the same issue. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes and market fragmentation. The Commission expects the Exchange to monitor the trading and quotation volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

In approving this proposal, the Commission notes that Exchange has represented that it has the necessary systems capacity to support the potential increase in new options series that will result from the proposed changes to the $1 Strike Price Program.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEArca–2010–106) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2115 Filed 1–31–11; 8:45 am]

BILLING CODE 8011–01–P

stocks, provided the $1 intervals are not within $0.50 of an existing series with a $2.50 strike price. *See* Rule 6.4 Commentary .04(c). This provision would not change under the current proposal.

[7] Rule 6.4A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, an exchange may not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63774; File No. SR–BX–2011–006]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Listing of $1 Strike Prices on the Boston Options Exchange Facility

January 25, 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 21, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange Group, LLC ("BOX") regarding the listing of $1 strike prices. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and also on the Exchange's Internet Web site at *http://*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to amend Supplementary Material .02 to Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the BOX Trading Rules to improve the operation of the $1 Strike Price Program.

Currently, the $1 Strike Price Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, BOX was not able to add $32, $33, $34, $36, $37 or $38 strikes during the day.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Price Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, BOX may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, BOX would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange proposes to prohibit $2.50 interval strikes below $50 in all $1 Strike Price Program issues, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, BOX proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") Provisions in Chapter IV, Section 6(b) of the BOX Rules.[3] For instance, if the underlying security was trading at $19, BOX could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, BOX may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long-term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from these changes to the $1 Strike Price Program.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[4] in general, furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Price Program by providing a consistent application of strike price intervals for issues in the $1 Strike Price Program. Moreover, the Exchange believes the proposed rule change would benefit investors by giving them more flexibility to closely tailor their investment decisions. While amending the $1 Strike Program to allow additional strike prices will generate additional quote traffic, BOX does not believe that this increased traffic will result in a material proliferation of additional series because it will affect a limited number of classes and BOX does

[3] Chapter IV, Section 6(b) of the BOX Rules codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, BOX shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78(f)(b)(5).

not believe that the additional price points will result in fractured liquidity.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[8] Therefore, the Commission designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–006 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–BX–2011–006. 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–BX–2011–006 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2123 Filed 1–31–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[8] *See* Securities Exchange Act Release No. 63773 (January 25, 2011) (SR–NYSEAmex–2010–109). *See also* Securities Exchange Act Release No. 63770 (January 25, 2011) (SR–NYSEArca–2010–106).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63777; File No. SR–Phlx-2010–157]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Complex Orders

January 26, 2011.

I. Introduction

On November 29, 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 (the "Act"),[1] and Rule 19b–thereunder,[2] a proposed rule change to amend the rules governing the trading of Complex Orders on the Phlx's electronic options trading platform, Phlx XL II, to, among other things: (i) Permit Complex Orders with up to six components, including the underlying stock or Exchange Traded Fund Share ("ETF"); (ii) establish a Do Not Auction ("DNA") designation for Complex Orders; (iii) add a definition of conforming ratio; (iv) provide priority rules for Complex Orders traded on Phlx XL II; and (v) provide for the communication of the stock or ETF component of a Complex Order by the Exchange to Nasdaq Options Services LLC ("NOS"), the Phlx's affiliated broker-dealer, for execution. The Exchange filed Amendment No. 1 to the proposal on December 6, 2010.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 15, 2010.[4] The Exchange filed Amendment No. 2 to the proposal on January 11,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revises Phlx Rule 1080, Commentary .08(a)(i), to indicate that member organizations submitting Complex Orders with a stock/ETF component represent that such orders comply with the qualified contingent trade exemption from Rule 611(a) of Regulation NMS under the Exchange Act.

[4] *See* Securities Exchange Act Release No. 63509 (December 9, 2010), 75 FR 78320 ("Notice").

2011.[5] The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, the Phlx's rules provide for the electronic trading of Complex Orders composed of two options components. As described in greater detail below and in the Notice,[6] the Phlx proposes to amend Phlx Rule 1080, Commentary .08, to provide for the electronic trading of Complex Orders composed of up to six components, which may include the underlying stock or ETF, and to make other changes to its rules governing the trading of Complex Orders on Phlx XL II.

A. Definitions

The proposal amends Phlx Rule 1080, Commentary .08(a)(i) to define a Complex Order, for purposes of that rule, as (i) an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy; or (ii) a stock-option order. A stock-option order is composed of an order to buy or sell a stated number of units of an underlying security (stock or ETF) coupled with the purchase or sale of options contract(s).[7] A Complex Order could be composed of up to six options series or, in the case of a stock-option order, five options series and the underlying stock or ETF.[8]

Stock-option orders may only be executed against other stock-option orders and cannot be executed against orders for the individual components.[9] A member may only submit a Complex Order with a stock or ETF component if the order complies with the qualified contingent trade exemption ("QCT Exemption") [10] from Rule 611(a) of Regulation NMS under the Act,[11] and a member submitting a Complex Order with a stock or ETF component represents that its order complies with the QCT Exemption.[12]

The proposal also adds a definition of conforming ratio for Complex Orders composed solely of options and for Complex Orders that include the underlying stock or ETF.[13] For Complex Orders composed solely of options, a conforming ratio is where the ratio between the sizes of the options components of a Complex Order is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For Complex Orders that include the underlying stock or ETF, a conforming ratio is where the ratio between any options component and the underlying security component is less than or equal to eight contracts to 100 shares of the underlying security. Complex Orders with a conforming ratio will be accepted but Complex Orders with a nonconforming ratio will not.[14]

In addition, the proposal provides a DNA designation for Complex Orders.[15] A DNA Order is not COLA-eligible, as defined in Phlx Rule 1080, Commentary .08(d)((ii)(B), and will not trigger or join a Complex Order Live Auction ("COLA").[16] DNA Orders are cancelled if not immediately executed.[17]

The proposal also updates the definitions of cPBBO and cNBBO to reflect the underlying security component of a stock-option order.[18] In addition, the proposal clarifies the definition of Complex Order Strategy and indicates that the Phlx's system will assign a strategy identifier to each Complex Order Strategy.[19]

B. Priority

Currently, the priority provisions in Phlx Rule 1033(d) apply to Complex Orders trading on Phlx XL II and to complex orders trading on the Phlx's floor.[20] The priority provisions in Phlx Rule 1033(e) apply to orders trading on the Phlx's floor that include a stock and an option component.[21] The proposal adds new Phlx Rule 1080, Commentary .08(c)(iii) to provide priority provisions for Complex Orders, including Complex Orders with a stock or ETF component, trading on Phlx XL II.

Specifically, Phlx Rule 1080, Commentary .08(c)(iii)(A), which applies to Complex Orders composed solely of options, states that Complex Orders consisting of a conforming ratio [22] may be executed at a total credit or debit price with priority over individual bids or offers established in the marketplace (including customers) that are not better than the bids or offers comprising such total credit or debit, provided that at least one option leg is executed at a better price than the established bid or offer for that option contract and no option leg is executed at a price outside of the established bid or offer for that option contract. The

[5] Amendment No. 2 revises Phlx Rule 1080(m)(iii)(A) to include text that was inadvertently omitted from Exhibit 5 of the Form 19b–4 submission. Specifically, the revised text indicates that, in addition to its current routing function, the Routing Facility (as defined below) will execute and report the underlying security component of a Complex Order otherwise than on the Phlx, pursuant to Phlx Rule 1080.08(h). Phlx states that this change is a clarifying and technical correction to conform the text of Rule 1080(m)(iii)(A) to: (i) The discussion in the Form 19b–4 submission regarding the proposed additional functions of NOS; and (ii) proposed Rule 1080.08(h). Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

[6] *See* Notice.

[7] *See* Phlx Rule 1080, Commentary .08(a)(i). In addition, the underlying security must be the deliverable for the options component of a stock-option order and must represent exactly 100 shares per option for regular way delivery. *Id.*

[8] *See* Phlx Rule 1080, Commentary .08(a)(i).

[9] *Id.*

[10] *See* Securities Exchange Act Release Nos. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) ("QCT Exemptive Order"). *See also* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

[11] 17 CFR 242.611(a).

[12] *See* Phlx Rule 1080, Commentary .08(a)(i) and Amendment No. 1.

[13] *See* Phlx Rule 1080, Commentary .08(a)(ix).

[14] *See* Notice at note 20.

[15] *See* Phlx Rule 1080, Commentary .08(a)(viii).

[16] *Id.*

[17] *See* Phlx Rule 1080, Commentary .08(a)(viii)(B). DNA Orders received prior to the opening or when the Complex Order Strategy is not available for trading will be cancelled. DNA Orders will initially be available only for Complex Orders with more than two options components or with an underlying security component. *See* Phlx Rule 1080, Commentary .08(a)(viii)(A) and (C).

[18] *See* Phlx Rule 1080, Commentary .08(a)(iv) and (vi). Specifically, the revised definitions indicate that when the underlying security is a component of a Complex Order, the best net debit or credit refers to the National Best Bid and/or Offer for the underlying security.

[19] *See* Phlx Rule 1080, Commentary .08(a)(ii).

[20] Phlx Rule 1033(d) states that when a member holding a hedge order, as defined in Rule 1066, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a hedge order at the total credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that the member executes at least one option leg at a better price than established bid or offer for that option contract AND no option leg is executed at a price outside of the established bid or offer for that option contract. Hedge orders include spread, straddle, combination, and tied hedge orders. *See* Phlx Rule 1066(f).

[21] Phlx Rule 1033(e) states that when a member holding a synthetic option order, as defined in Rule 1066, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a synthetic option order at the total credit or debit with one other member, provided that the member executes the option leg at a better price than the established bid or offer for that option contract, in accordance with Rule 1014. Synthetic option orders in open outcry, in which the option component is for a size of 100 contracts or more, have priority over bids (offers) of crowd participants who are bidding (offering) only for the option component of the synthetic option order, but not over bids (offers) of public customers on the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price.

[22] *See* Phlx Rule 1080, Commentary .08(a)(ix).

Phlx states that new Phlx Rule 1080, Commentary .08(c)(iii)(A) provides the same priority as Phlx Rule 1033(d), under the same conditions, to a broader class of Complex Orders.[23]

Phlx Rule 1080, Commentary .08(c)(iii)(B) states that where a Complex Order consists of the underlying stock or ETF and one options leg in a conforming ratio,[24] such options leg does not have priority over bids and offers established in the marketplace, including customer orders. However, where a Complex Order consists of the underlying stock or ETF and more than one options leg in a conforming ratio, the options legs have priority over bids and offers established in the marketplace, including customer orders, if at least one options leg improves the existing market for that option.[25]

C. Execution of the Stock or ETF Component of a Complex Order

1. Role of NOS

To trade Complex Orders with a stock or ETF component through Phlx XL II, members of the Financial Industry Regulatory Authority, Inc. ("FINRA") or the NASDAQ Stock Market ("Nasdaq") must have a Uniform Service Bureau/Executing Broker Agreement ("AGU") with NOS, and firms that are not members of FINRA or Nasdaq must have a Qualified Special Representative ("QSR") arrangement with NOS.[26] NOS, a broker-dealer and FINRA member, serves as the Phlx's Routing Facility and is subject to regulation as a facility of the Phlx.[27]

Phlx Rule 985(b), "Restrictions on Affiliation," generally prohibits the Phlx or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture with a Phlx member or an affiliate of a Phlx member in the absence of an effective filing with the Commission under Section 19(b) of the Act.[28] NOS is a member of Phlx and also an indirect wholly-owned subsidiary of Phlx's parent company, and therefore an affiliate of Phlx.[29] The Commission has approved NOS as an affiliate of Phlx for the purpose of routing orders in options listed and open for trading on Phlx XL II to away market centers pursuant to Phlx rules on behalf of Phlx.[30] Phlx Rule 1080(m)(iii) states that "[t]he sole use of the Routing Facility by the Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to Exchange rules on behalf of the Exchange."

For NOS to perform additional functions for the Phlx, the Phlx must file a proposed rule change with the Commission pursuant to Section 19 of the Act and the rules and regulations thereunder.[31] In the current proposal, the Phlx proposes to allow NOS to act as the agent responsible for the execution of the stock or ETF component of a Complex Order in addition to its approved routing functions.[32] NOS's function with respect to the execution of the stock or ETF component of a Complex Order will be available to all Phlx member organizations.[33]

2. Execution of the Stock or ETF Component of a Complex Order

Where one component of a Complex Order is the underlying stock or ETF, the Phlx will electronically communicate the underlying security component to NOS for execution [34] after the Phlx's trading system determines that a Complex Order trade is possible and the prices for each of the components.[35] The execution and reporting of the underlying security component of the order will occur otherwise than on the Exchange, and NOS will handle these orders pursuant to applicable rules regarding equity trading,[36] including the rules governing trade reporting, trade-throughs, and short sales.[37]

NOS, a FINRA member, will be responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Trade.[38] The Phlx notes that NOS is subject to examination by FINRA and is responsible for compliance with applicable rules, including NASD Rule 3010, "Supervision," which generally requires NOS to establish and maintain supervisory systems that are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD and FINRA rules.[39] The Phlx represents that NOS intends to have in place policies related to confidentiality and the potential for informational advantages relating to its affiliates, which are intended to protect against the misuse of material non-public information.[40]

For the reasons described below, the Phlx believes that the processing of the stock or ETF component of a Complex Order under the proposal will comply with applicable rules regarding equity trading, including the rules governing trade reporting, trade-throughs, and short sales.[41] The Phlx represents that NOS's responsibilities respecting these equity trading rules will be documented in NOS's written policies and procedures, and that NOS's compliance with these policies and procedures is monitored, reviewed, and updated as part of NOS's regular and routine regulatory program.[42]

3. Compliance With Trade Reporting Requirements and QCT Exemption

The Phlx states that NOS will report trades in the underlying stock or ETF to the FINRA/Nasdaq Trade Reporting Facility ("TRF").[43]

Phlx Rule 1080, Commentary .08(a)(i) permits a member to submit a Complex Order with a stock or ETF component only if the order complies with the QCT Exemption, and provides, further, that a member submitting a Complex Order

[23] *See* Notice at notes 22–23 and accompanying text.

[24] *See* Phlx Rule 1080, Commentary .08(a)(ix) and note 13, *supra.*

[25] *See* Phlx Rule 1080, Commentary .08(c)(iii)(B).

[26] *See* Phlx Rule 1080, Commentary .08(a)(i).

[27] *See* Phlx Rule 1080(m)(iii).

[28] 15 U.S.C. 78s(b).

[29] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (order approving File No. SR–Phlx–2009–32) ("NOS Order").

[30] *Id.* The Commission also has approved NOS as an affiliate of Phlx for the limited purpose of providing routing services for Nasdaq Exchange for orders that first attempt to access liquidity on Nasdaq Exchange's systems before routing to Phlx, subject to certain conditions. *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving File No. SR–Phlx–2008–31).

[31] *See* NOS Order, *supra* note 29.

[32] Phlx Rule 1080(m)(iii)(A), as amended, states, in part, that "The sole use of the Routing Facility by the Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to Exchange rules on behalf of the Exchange and, in addition, where one component of a Complex Order is the underlying security, to execute and report such component otherwise than on the Exchange, pursuant to Rule 1080.08(h)." *See* Amendment No. 2. *See also* Notice at note 31 and accompanying text.

[33] *See* Notice at 78324.

[34] *See* Phlx Rule 1080, Commentary .08(h).

[35] *See* Notice at 78324 and at note 44 and accompanying text.

[36] *See* Phlx Rule 1080, Commentary .08(h).

[37] *See* Notice at note 34 and accompanying text.

[38] *See* Notice at notes 31–32 and accompanying text.

[39] *See* Notice at note 32 and accompanying text.

[40] *See* Notice at notes 32–33 and accompanying text. In addition, the Phlx notes that Phlx Rule 1080(m)(iii)(C) requires the Exchange to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Phlx and NOS, and any other entity, including any affiliate of NOS. *See* Notice at note 33.

[41] *See* Notice at notes 42–43 and accompanying text.

[42] *Id.*

[43] *See* Notice at note 35 and accompanying text. The FINRA/Nasdaq TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. ("Nasdaq OMX") and utilizes Automated Confirmation Transaction ("ACT") Service technology. *See* Notice at note 35.

with a stock or ETF component represents that its order complies with the QCT Exemption.[44] In addition, as described in greater detail in the Notice, the Phlx represents that its trading system will validate compliance with each of the requirements of the QCT Exemption, thereby assisting NOS in carrying out its responsibilities as agent for these orders.[45]

4. Compliance With Regulation SHO

The Phlx represents that the proposal raises no issues of compliance with the currently operative provisions of Regulation SHO.[46] The Phlx notes that when a Complex Order has a stock or ETF component, Regulation SHO requires a member organization to indicate whether that order involves a long or short sale. The Phlx states that its trading system will accept Complex Orders with a stock or ETF component marked to reflect either a long or short position and the trading system will reject orders not marked as either long or short.[47] In addition, the Phlx states that the trading system will reject orders not marked as buy, sell, or sell short.[48] The Phlx's trading system will electronically deliver the stock or ETF component to NOS for execution. Simultaneous with the options execution on the Phlx, NOS will execute and report the stock or ETF component, which will contain the long or short indication as it was delivered to the Phlx's trading system by the member organization.[49] The Phlx also states that various surveillance and examination regulatory programs check for compliance with Regulation SHO.[50]

The Phlx notes that the Commission amended Rules 201 and Rule 200(g) of Regulation SHO [51] earlier this year to adopt a short sale-related circuit breaker that, if triggered, would impose a restriction on the price at which securities may be sold short ("short sale price test restriction").[52] Under these amendments, a broker-dealer may mark certain qualifying short sale orders as "short exempt." [53] The Phlx notes that the Commission extended the compliance date for the amendments to Rules 201 and 200(g) until February 28, 2011.[54] The Phlx states that after the new provisions of Regulation SHO become operative, NOS will accept orders marked "short exempt." [55] The Exchange represents, further, that it intends to file a proposed rule change addressing the new provisions.[56] In addition, the Phlx represents that NOS, as a trading center under Rule 201,[57] will be compliant with the requirements of Regulation SHO.[58]

5. Execution Price of the Underlying Security and Electronic Processing

Under the proposal, the execution price of the order for the underlying security must be within the security's high-low range for the day at the time the Complex Order is processed and within a specified price from the current market, which the Phlx will establish in an Options Trader Alert.[59] If the stock price is not within these parameters, the Complex Order is not executable.[60]

The Exchange believes that electronic submission of the stock or ETF component of a Complex Order should help ensure that the Complex Order, as a whole, is executed in a timely manner and at the desired price.[61] The Phlx notes that electronic communication eliminates the need for each party to separately manually submit the stock or ETF component to a broker-dealer for execution.[62] In addition, the Exchange emphasizes that the execution of the stock or ETF component of a Complex Order will be immediate, with the Phlx's system calculating the stock or ETF price based on the net debit/credit price of the Complex Order, while also calculating and determining the appropriate options price(s), all electronically and immediately.[63] The Exchange believes that this approach will not require the Exchange to later nullify options trades if the stock price cannot be achieved.

The Exchange believes that it is appropriate for its affiliate, NOS, to act as the exclusive conduit for the execution of the stock or ETF component of a Complex Order.[64] The Phlx states that, as a practical matter, complex order programs on other exchanges necessarily involve specific arrangements with a broker-dealer to facilitate prompt execution.[65] The Phlx believes, further, that offering the benefits of prompt, seamless, automatic execution for both the options and stock or ETF components of a Complex Order is an important feature that should enhance the complex order processing available on options exchanges today.[66] The Phlx represents that neither the Exchange nor NOS intends to charge a fee for the execution of the stock or ETF component of a Complex Order.[67]

D. Complex Order Entry, Processing, and Execution

The Phlx proposes additional changes to Phlx Rule 1080, Commentary .08, relating to the entry, processing, and

[44] *See* Phlx Rule 1080, Commentary .08(a)(i) and Amendment No. 1. The QCT Exemption applies to trade-throughs caused by the execution of an order involving one or more NMS stocks that are components of a "qualified contingent trade." As described more fully in the QCT Exemptive Order, a qualified contingent trade is a transaction consisting of two or more component orders, executed as principal or agent, where: (1) At least one component order is an NMS stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* QCT Exemptive Order, *supra* note 10.

[45] *See* Notice at notes 37–39 and accompanying text.

[46] 17 CFR 242.200 *et seq. See* Notice at note 40 and accompanying text.

[47] Telephone conversation between Andrea Orr, Special Counsel, Division of Trading and Markets Commission, with Edith Hallahan, Associate General Counsel, Phlx, on January 25, 2011.

[48] *See* Notice at notes 40–42 and accompanying text.

[49] *Id.*

[50] *Id.*

[51] 17 CFR 242.201 and 200(g).

[52] *See* Securities Exchange Act Release No. 61595 (February 26, 2010). 75 FR 11232 (March 10, 2010)

[53] *See* Notice at note 41 and accompanying text.

[54] *See* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (File No. S7–08–09) ("Compliance Date Extension Release").

[55] *See* Notice at note 42 and accompanying text.

[56] *Id.*

[57] 17 CFR 242.201.

[58] *See* Notice at notes 40–42 and accompanying text.

[59] *See* Phlx Rule 1080, Commentary .08(h).

[60] *Id.*

[61] *See* Notice at note 43 and accompanying text.

[62] *See* Notice at notes 43–44 and accompanying text.

[63] *See* Notice at note 44 and accompanying text.

[64] *See* Notice at note 46 and accompanying text. The Phlx also notes that Phlx Rule 985(c)(1) requires Nasdaq OMX, which owns NOS and the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members and member organizations in connection with the provision of inbound routing to the Exchange. *See* Notice at note 46.

[65] *See* Notice notes 46–47 and accompanying text.

[66] *Id.*

[67] The Phlx notes, however, that TRF and clearing fees, not charged by Phlx or NOS, may result. The Phlx states that the National Securities Clearing Corporation ("NSCC") and ACT will bill firms directly for their use of the NSCC and ACT systems, respectively. The Phlx represents that, to the extent that NOS is billed by NSCC or ACT, it will not pass through to firms such fees for the stock or ETF component of a Complex Order. *See* Notice at note 47.

execution of Complex Orders. In this regard, the proposal revises Phlx Rule 1080, Commentary .08(c)(i) to indicate that a Complex Order with an underlying security component is eligible to trade only when the underlying security component is open for trading on its primary market.

In addition, the proposal revises Phlx Rule 1080, Commentary .08(e)(vi)(A)(1) to: (i) Add the word "legging" to refer to the execution of a COLA-eligible order against interest in the leg market, as described in that paragraph; and (ii) indicate that legging may not occur when the underlying security is a component of a Complex Order. Similarly, the proposal revises Phlx Rule 1080, Commentary .08(f)(iii), relating to executions against the CBOOK, to indicate that legging will not take place when the underlying security is a component of a Complex Order.

Phlx Rule 1080, Commentary .08(e)(i)(B)(2) currently provides that a Complex Order received during the final ten seconds of a trading session is not COLA-eligible. The proposal modifies the rule to make this time configurable, but no longer than ten seconds.

The proposal also amends Phlx Rule 1080, Commentary .08(b)(ii) to allow Streaming Quote Traders ("SQTs"), Remote Streaming Quote Traders ("RSQTs"), non-SQT Registered Options Traders ("ROTs"), specialists, and non-Phlx market makers on another exchange to enter Complex Orders with more than two options components or an underlying security component as Day orders, in addition to entering them as Immediate or Cancel ("IOC").[68] The Phlx believes that this change could encourage more orders from these market participants.

The proposal amends Phlx Rule 1080, Commentary .08(b)(iii) to indicate that Floor Brokers using the Options Floor Broker Management System ("FBMS") may not enter DNA Orders, orders with a stock or ETF component, or orders with more than two legs. The Phlx notes that Floor Brokers are able to use systems other than FBMS to access Phlx XL II, and are unlikely to need or request changes to FBMS because they execute more complex orders in the trading crowd than through FBMS.[69]

The proposal also eliminates provisions that currently provide an SQT or RSQT quoting all of the components of a Complex Order in the leg market with priority over an SQT or RSQT quoting a single component of the order.[70] The Phlx believes that these changes will simplify the allocation process as the Exchange's system begins to accept more Complex Order types.[71] The Phlx believes, further, that the benefits provided by these provisions are not material, and that they are not being realized intentionally by market participants.[72] Under the revised rules, an SQT or RSQT quoting all components of a Complex Order will be on parity with SQTs and RSQTs quoting a single component.[73]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[74] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[75] which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Currently, only Complex Orders with two options components may be traded on Phlx XL II. For the reasons discussed below, the Commission believes that the proposal, as amended, could facilitate the trading of Complex Orders by, among other things, permitting Complex Orders with up to six components, including the underlying stock or ETF, to be traded on Phlx XL II.

A. Priority Rules

As discussed above, the proposal adopts a new definition of Complex Order and adds a new defined term, conforming ratio, relating to Complex Orders. The Commission notes that the definition of a Complex Order in Phlx Rule 1080, Commentary .08(a)(i), including Complex Orders composed solely of options and Complex Orders composed of option(s) and the underlying stock or ETF, together with the definition of conforming ratio in Phlx Rule 1080, Commentary .08(a)(ix), are comparable to the definitions of Complex Order, Stock/Complex Order, and stock-option order adopted by other options exchanges.[76]

A Complex Order with a nonconforming ratio will not be accepted,[77] and only Complex Orders with conforming ratios will be eligible for the priority treatment provided in Phlx Rule 1080, Commentary .08(c)(iii).[78] Specifically, for Complex Orders composed solely of options, Phlx Rule 1080, Commentary .08(c)(iii)(A) provides that a Complex Order with a conforming ratio may be executed at a total net credit or debit with priority over individual bids or offers established in the marketplace (including customers) that are not better than the bids or offers comprising such total credit or debit, provided that at least one option leg is executed at a better price than the established bid or offer for that option and no option leg is executed at a price outside of the established bid or offer for that option. The priority provisions in Phlx Rule 1080, Commentary .08(c)(iii)(A) are consistent with the existing priority provisions in Phlx Rule 1033(d), which will continue to apply to trading on the Phlx's floor, and with the priority rules of other options exchanges.[79]

For Complex Orders composed of the underlying stock or ETF and one options leg in a conforming ratio, Phlx Rule 1080, Commentary .08(c)(iii)(B) provides that the options leg does not have priority over bids and offers established in the marketplace, including customer orders. This provision is similar to Phlx Rule 1033(e),[80] and to the requirements of

[68] After the Phlx has fully rolled out its enhanced Complex Order system, Day orders also will become available for Complex Orders with two options components. *See* Phlx Rule 1080, Commentary .08(b)(ii).

[69] *See* Notice at 78323.

[70] *See* Phlx Rules 1080, Commentary .08(e)(vi)(A)(1), (f)(iii)(A), and (f)(iii)(B)(1).

[71] *See* Notice at note 29 and accompanying text.

[72] *Id.*

[73] *Id.*

[74] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[75] 15 U.S.C. 78f(b)(5).

[76] *See, e.g.,* ISE Rule 722(a)(1) and NYSEAmex Rule 900.3NY(e) (defining a complex order). *See also* NYSEAmex Rule 900.3NY(h)(2) (defining a Stock/Complex Order) and ISE Rule 722(a)(2) and NYSEAmex Rule 900.3NY(h)(1) (defining a stock-option order).

[77] *See* Notice at note 20.

[78] Throughout Phlx Rule 1080, Commentary .08, the proposal replaces references to the priority provisions in Phlx Rule 1033(d) with references to the priority provisions in Phlx Rule 1080, Commentary .08(c)(iii). Phlx Rule 1033(d) will continue to apply to trading on the Phlx's floor, and the priority provisions in Commentary .08(c)(iii) will apply to Complex Orders trading on PHLX XL II.

[79] *See, e.g.,* ISE Rule 722(b)(2) and NYSEAmex Rule 980, Commentary .02. *See also* CBOE Rules 6.45(e), 6.45A(b)(ii), and 6.45B(b)(ii). The Phlx states that Phlx Rule 1080, Commentary .08(c)(iii) provides the same priority as Phlx Rule 1033(d), under the same conditions, to a broader class of Complex Orders. *See* Notice at notes 22–23 and accompanying text.

[80] Phlx Rule 1033(e) requires the option leg of a stock-option order (called a synthetic option order) to be executed at a price better than the established bid or offer for that option. For synthetic option orders trading in open outcry in which the option

other options exchanges.[81] For a Complex Order composed of the underlying stock or ETF and more than one options leg in a conforming ratio, the options legs have priority over bids and offers established in the marketplace, including customer orders, if at least one options leg improves the existing market for that option.[82] This provision is similar to ISE Rule 722(b).[83]

B. Execution of the Stock or ETF Component of a Complex Order

1. NOS's Role as Agent for the Stock or ETF Component of a Complex Order

NOS serves as the Phlx's Routing Facility. In addition to its currently approved routing functions, the Phlx proposes to allow NOS to act as the agent for orders to buy and sell the underlying stock or ETF component of a Complex Order.

As described more fully above, after the Phlx's system determines that a Complex Order trade is possible and the prices for the trade, the Phlx will electronically communicate the stock or ETF component of the Complex Order to NOS for execution. NOS, acting as agent for the orders to buy and sell the underlying stock or ETF, will execute the orders in the over-the-counter ("OTC") market and will handle the orders pursuant to applicable rules regarding equity trading,[84] including the rules governing trade reporting, trade-throughs, and short sales.[85] NOS will be responsible for the proper execution, trade reporting, and submission to clearing of the underlying stock or ETF component of a Complex Order.[86]

Based in part on the Phlx's statements and representations in the Notice, the Commission believes that the proposal to allow NOS to serve as the agent responsible for executing the stock or ETF component of a Complex Order is consistent with the Act. The Commission notes that, as a facility of the Phlx, NOS is subject to oversight by the Commission and by the Phlx.[87] In addition, NOS, a member of FINRA, is responsible for compliance with applicable rules regarding equity trading, including rules governing trade reporting, trade-throughs and short sales, and is subject to examination by FINRA.[88] Because NOS will execute the stock or ETF component of a Complex Order in the OTC market, the principal regulator of these trades will be FINRA, rather than the Phlx or Nasdaq.[89]

The Phlx notes that NASD Rule 3010 generally requires NOS to establish and maintain supervisory systems that are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD and FINRA rules.[90] The Phlx represents that NOS intends to have in place policies related to confidentiality and the potential for informational advantages relating to its affiliates, which are intended to protect against the misuse of material non-public information.[91] The Phlx represents, further, that NOS's responsibilities respecting applicable equity trading rules, including the rules governing trade reporting, trade-throughs, and short sales, will be documented in NOS's written policies and procedures, and that NOS's compliance with these policies and procedures is monitored, reviewed, and updated as part of NOS's regular and routine regulatory program.[92]

The Phlx represents that neither the Exchange nor NOS intends to charge a fee for the execution of the stock or ETF component of a Complex Order.[93] The Commission notes that if the Phlx or NOS decides in the future to charge fees for NOS's execution of the stock or ETF component of a Complex Order, or to modify its rules relating to NOS's execution of the stock or ETF component of a Complex Order, the Phlx would be responsible for filing the proposed fee or rule change with the Commission pursuant to Section 19(b) of the Act.[94] The Commission notes, in addition, that NOS's execution of the stock or ETF component of a Complex Order is subject to exchange non-discrimination requirements.[95]

C. DNA Designation and Additional Definitions

The proposal adopts a DNA designation for Complex Orders.[96] A DNA Order is not COLA-eligible and will not trigger or join a COLA.[97] The Commission believes that DNA Orders will provide additional flexibility in executing Complex Orders by allowing market participants to submit Complex Orders that will not trigger or join a COLA.

The Commission believes that the revised definitions of cPPBO and cNBBO will update those definitions to reflect that the underlying security could be component of a Complex Order.[98] The Commission believes that the changes to the definition of Complex Order Strategy[99] will help to clarify that term and the role of the Phlx's system in assigning a strategy identifier to a Complex Order Strategy.

component is for 100 contracts or more, the synthetic option order has priority over crowd participants who are bidding (offering) only for the option component of the order, but over the bids (offers) of public customers in the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price.

[81] *See, e.g.,* CBOE Rule 6.53C, Commentary .06(b) and NYSEAmex Rule 980NY, Commentary .03(b) (the option leg of a Stock-Option Order will not be executed on the exchange's system at the exchange's best bid (offer) in that series if one or more public customer orders are resting at that price on the electronic book, unless the option leg trades with such public customer order(s)); and ISE Rule 722(b)(2) (a stock-option order with one options leg has priority over bids and offers established in the marketplace by Professional Orders and market makers at the price of the options leg, but not over such bids or offers established by Priority Customer Orders). *See also* CBOE Rule 6.45(e) (stock-option orders have priority over bids (offers) of the trading crowd but not over bids (offers) in the public customer limit order book).

[82] *See* Phlx Rule 1080, Commentary .08(c)(iii)(B).

[83] ISE Rule 722(b)(2) provides, in part, that the options legs of a stock-option order with more than one options leg may be executed at a total net credit or debit with one other Member without giving priority to established bids or offers that are no better than the bids or offers comprising the net credit or debit, provided that if any of the established bids or offers consist of a Priority Customer Order, the price of at least one leg must trade at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment.

[84] *See* Phlx Rule 1080, Commentary .08(h).

[85] *See* Notice at note 34 and accompanying text.

[86] *See* Notice at notes 31–32 and accompanying text.

[87] Phlx Rule 1080(m)(iii)(A) states that NOS is subject to regulation as a facility of the Phlx. Phlx Rule 1080(m)(iii)(D) provides, further, that the books, records, premises, officers, directors, agents, and employees of NOS, as a facility of the Phlx, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Phlx for purposes of and subject to oversight pursuant to the Act. The books and records of NOS, as a facility of the Phlx, shall be subject at all times to inspection and copying by the Phlx and the Commission.

[88] *See* Notice at 78324. Phlx Rule 1080(m)(iii)(A) states that NOS is a member of an unaffiliated self-regulatory organization which the designated examining authority for NOS.

[89] *See* Notice at 78324.

[90] *See* Notice at note 32 and accompanying text.

[91] *See* Notice at note 33 and accompanying text. In addition, the Phlx notes that Phlx Rule 1080(m)(iii)(C) requires the Exchange to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Phlx and NOS, and any other entity, including any affiliate of NOS. *See* Notice at note 33.

[92] *See* Notice at 78325.

[93] *See* Notice at note 47 and accompanying text. The Phlx notes, however, that TRF and clearing fees, not charged by Phlx or NOS, may result. The Phlx states that NSCC and ACT will bill firms directly for their use of NSCC and ACT systems, respectively. Further, the Phlx represents that, to the extent that NOS is billed by NSCC or Act, it will not pass through such fees to firms for the stock or ETF portion of a Complex Trade under this proposal. *See* Notice at note 47.

[94] *See* NOS Order, *supra* note 30, at footnote 84.

[95] *Id.*

[96] *See* Phlx Rule 1080, Commentary .08(a)(viii).

[97] *Id.*

[98] *See* Phlx Rule 1080, Commentary .08(a)(iv) and (vi).

[99] *See* Phlx Rule 1080, Commentary .08(a)(ii).

D. Complex Order Entry, Processing, and Execution

The Commission finds that the changes to Phlx Rule 1080, Commentary .08(c)(i) indicating that a Complex Order with an underlying security component is eligible to trade only when the underlying security is open for trading on its primary market, and the changes to Phlx Rule 1080, Commentary .08(e)(vi)(A)(1) and .08(f)(iii) that indicate that legging may not occur, either in a COLA or against the CBOOK, when the underlying security is a component of a Complex Order, should help to clarify the operation of the Phlx's rules relating to the execution of Complex Orders with an underlying stock or ETF component. Similarly, the Commission believes that adding the term "legging" to Phlx Rule 1080, Commentary .08(e)(vi)(A)(1) to refer to the activity described in that rule could help to clarify the rule.

The amendment to Phlx Rule 1080, Commentary .08(e)(i)(B)(2) that permits the Phlx to determine the time period, which will not exceed ten seconds, at the end of a trading session when an order will not be COLA-eligible should provide the Phlx with flexibility in determining the time period within which the Exchange will not initiate a COLA during the final seconds of a trading session. The Commission notes that the Phlx will establish this time period in an Options Trader Alert.[100]

The Commission believes that modifying Phlx Rule 1080, Commentary .08(b)(ii) to allow SQTs, RSQTs, non-SQT ROTs, specialists, and non-Phlx market makers on another exchange to enter Complex Orders with more than two options components or an underlying security component as Day orders, in addition to entering them as IOC orders, could encourage these market participants to submit Complex Orders by providing them with greater flexibility in entering orders.

The Commission believes that the amendments to Phlx Rule 1080, Commentary .08(b)(iii) indicating that Floor Brokers using the FBMS may not enter DNA Orders, orders with a stock or ETF component, or orders with more than two legs are reasonable because, according to the Phlx, Floor Brokers are able to use systems other than FBMS to access Phlx XL II.[101] In addition, the Commission notes that the Phlx believes that Floor Brokers are unlikely to need or request changes to FBMS because they execute more complex orders in the trading crowd than through FBMS.[102]

The Commission believes that the changes to Phlx Rules 1080, Commentary .08(e)(vi)(A)(1), (f)(iii)(A), and (f)(iii)(B)(1) that place an SQT or RSQT quoting all components of a Complex Order on parity with SQTs and RSQTs quoting a single component are consistent with the Act. The Phlx believes that these changes will simplify the allocation process as PHLX XL II begins to accept more Complex Order types.[103] In addition, the Phlx believes that the benefits provided by the current rules giving priority to SQTs and RSQTs quoting all components of a Complex Order are not material, and that they are not being realized intentionally by market participants.[104] The Commission notes that under the revised rules, public customer orders will continue to have priority over SQTs and RSQTs.[105]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[106] that the proposed rule change (File No. SR–Phlx–2010–157), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[107]

Elizabeth M. Murphy,

Secretary.

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[100] *See* Phlx Rule 1080, Commentary .08(e)(B)(2).

[101] *See* Notice at 78323.

[102] *Id.*

[103] *See* Notice at note 29 and accompanying text.

[104] *Id.*

[105] *See* Phlx Rules 1014(g)(vii) and 1080, Commentary .08(e)(vi)(A)(1), (f)(iii)(A), and (f)(iii)(B)(1).

[106] 15 U.S.C. 78s(b)(2).

[107] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63779; File No. SR–EDGX–2011–01]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.9

January 26, 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 21, 2011, the EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 proposes to amend Rule 11.9 to add its routing options, which are currently contained in its fee schedule, to the rule and to introduce additional options to the rule. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 Exchange's current fee schedule contains a list of routing options. The Exchange proposes to move the current list of routing options from the fee schedule and codify it in Rule 11.9(a)(3). In addition, the Exchange proposes to amend the existing routing option descriptions to provide additional clarity and introduce additional routing options to Rule 11.9(a)(3).

The Exchange intends to implement the rule change upon filing with the Commission with respect to all routing options, except ROOC, which the Exchange intends to implement on or about February 14, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

First, the Exchange proposes to move its discussion of available routing options, which is located at the end of the fee schedule, and codify it in Rule 11.9(b)(3)(a)–(r).

Currently, the fee schedule has the following descriptions of routing strategies:

ROUQ	sweeps the EDGX book, then routes to other destination centers.
ROUC	sweeps the EDGX book, then sequentially sweeps the balance, if any, to the following destinations: other destination centers, then Nasdaq OMX BX, NYSE, and the remainder posts to EDGX.
ROUD	sweeps the EDGX book before being routed to other destination centers.
ROUE	sweeps the EDGX book, then other destination centers, and any remainder routes to other market centers.
ROUZ	sweeps the EDGX book before interacting with solicited orders on a price/time priority basis.
INET	sweeps the EDGX book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable.
ROBA	sweeps the EDGX book and routes to BATS BZX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.
ROBX	sweeps the EDGX book and routes to Nasdaq BX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.
ROBY	sweeps the EDGX book and routes to BATS BYX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.

The Exchange proposes to amend Rule 11.9(b)(2) to cross-reference the routing options listed in proposed Rule 11.9(b)(3), as described in more detail below.

The Exchange proposes to describe how its routing options work in Rule 11.9(b)(3). The Exchange's system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are described in more detail below.

The ROUC strategy currently states that under this strategy an order sweeps the book then sequentially sweeps the balance, if any, to the following destinations: Other destination centers, then Nasdaq OMX BX, NYSE, and the remainder posts to EDGX. The Exchange proposes to amend the description to state that it is a routing option under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the Exchange's book. The Exchange will place this proposed description in Rule 11.9(b)(3)(a).

The ROUD strategy description states that it sweeps the book before being routed to other destination centers. The Exchange proposes to revise this description to state that it checks the System for available shares and then is sent sequentially to destinations on the System routing table. The ROUE routing strategy currently states that it sweeps the book, then other destination centers, and any remainder routes to other market centers. The Exchange proposes to revise this description to state that an order routed under this strategy checks the System for available shares, and then is sent to destinations on the System routing table. The revised descriptions of the ROUD and ROUE routing strategies, as described above, will be placed in proposed Rules 11.9(b)(3)(b)–(c).

The INET strategy is currently described as a strategy that sweeps the EDGX book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable. The Exchange proposes to revise the description to read that "such an order checks the System for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on Nasdaq book." The proposed description of the INET routing strategy, as described above, will be placed in proposed Rule 11.9(b)(3)(d).

The Exchange's current description of the ROBA strategy states that it is a strategy under which an order sweeps the book and routes to BATS BZX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution. The Exchange proposes to revise such description to read that such order checks the System for available shares and then is sent to BATS BZX Exchange as an IOC order. If shares remain unexecuted after routing, they are cancelled. The proposed description will be placed in Rule 11.9(b)(3)(e).

ROBX is currently described as a strategy under which an order sweeps the book and routes to Nasdaq BX Exchange as an IOC order, with the remainder being cancelled if there is no execution. This description is proposed to be revised to read that such order "checks the System for available shares and then is sent to Nasdaq BX Exchange as an immediate or cancel (IOC) order. If shares remain unexecuted after routing, they are cancelled."

ROBY is currently described as a strategy under which an order sweeps the EDGX book and routes to BATS BYX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution. This description is proposed to be revised to state that such order "checks the System for available shares and then is sent to BATS BYX Exchange as an IOC order. If shares remain unexecuted after routing, they are cancelled." The revised descriptions of the ROBX and ROBY strategies are proposed to be placed in Rules 11.9(b)(3)(f)–(g).

The Exchange proposes to codify the following strategies in Rule 11.9(b)(3)(h)–(r) as well:

In proposed rule 11.9(b)(3)(h), the Exchange proposes to describe the ROUT routing option as a routing option under which an order checks the System for available shares, and then is sent to destinations on the System routing table.

In proposed rule 11.9(b)(3)(i), the Exchange proposes to describe the ROUX routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

In proposed rule 11.9(b)(3)(j), the Exchange proposes to describe the RDOT routing option as a routing option under which an order checks the System for available shares, and then is sent sequentially to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE.

In proposed rule 11.9(b)(3)(k), the Exchange proposes to describe the

RDOX routing option under which an order checks the System for available shares, and then is sent to the NYSE.

In proposed rule 11.9(b)(3)(l), the Exchange proposes to describe the ROLF routing option under which an order checks the System for available shares, and then is sent to LavaFlow ECN.

In proposed rule 11.9(b)(3)(m), the Exchange proposes to describe the ROPA routing option under which an order checks the System for available shares and then is sent to NYSE Arca as an immediate or cancel order (IOC). If shares remain unexecuted after routing, they are cancelled.

In proposed rule 11.9(b)(3)(n), the Exchange proposes to describe the IOCX routing option under which an order checks the System for available shares and then is sent to EDGA.

In proposed rule 11.9(b)(3)(o), the Exchange proposes to describe the IOCT routing option under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to EDGA.

In proposed rule 11.9(b)(3)(p), the Exchange proposes to describe the ROOC routing option for orders that the entering firm wishes to designate for participation in the opening or closing process of a primary listing market (NYSE, Nasdaq, NYSE Amex, or NYSE Arca) if received before the opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening or closing process, they are either posted to the book, executed, or routed like a ROUT routing option, as described in proposed Rule 11.9(b)(3)(h), above.

The Exchange also proposes to introduce the SWPA and SWPB routing strategies and add them to proposed Rules 11.9(b)(3)(q)–(r). Under the SWPA strategy, an order would check the System for available shares and then would be sent to Protected Quotations and only for displayed size. Under this strategy, orders would not have to contain sufficient size to execute against *all* Protected Quotations (emphasis added). If any shares remain unexecuted, such remainder will be cancelled back to the User. Under the SWPB routing strategy, an order would check the System for available shares and then is sent to Protected Quotations and only for displayed size. Under this strategy, orders would have to contain sufficient size to execute against all Protected Quotations. The entire SWPB order will be cancelled back to the User immediately if at the time of entry there is insufficient quantity in the SWPB order to fulfill the displayed size of all Protected Quotations. The Exchange believes that the proposed introduction of the SWPA/B routing options will provide market participants with greater flexibility in routing orders consistent with Regulation NMS. This proposed rule change is similar to NASDAQ Rule 4758(a)(1)(A)(vi) (NASDAQ's "MOPP" strategy) and BATS Exchange, Inc. Rule 11.13(a)(3)(D) ("Parallel T").[4]

In addition, the Exchange also believes that the proposed introduction of the routing options, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own. In addition, it will provide additional clarity and specificity to the Exchange's rules regarding routing strategies and will further enhance transparency with respect to Exchange routing offerings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange Users new routing strategies, and with respect to the ROOC option, as soon as the technology for such strategy is completed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available, and, with respect to the ROOC option, available on or about February 14, 2011, and would immediately provide additional clarity and specificity to the Exchange's rules regarding routing strategies and further enhance transparency with respect to Exchange routing offerings. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] *See, e.g.,* NASDAQ Rule 4758, BATS Rule 11.13(a)(3)(D).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *Id.*

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–EDGX–2011–01 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–EDGX–2011–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2011–01 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2132 Filed 1–31–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63778; File No. SR–EDGA–2011–01]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.9

January 26, 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 21, 2011, the EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 proposes to amend Rule 11.9 to add its routing options, which are currently contained in its fee schedule, to the rule and to introduce additional options to the rule. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 Exchange's current fee schedule contains a list of routing options. The Exchange proposes to move the current list of routing options from the fee schedule and codify it in Rule 11.9(a)(3). In addition, the Exchange proposes to amend the existing routing option descriptions to provide additional clarity and introduce additional routing options to Rule 11.9(a)(3).

The Exchange intends to implement the rule change upon filing with the Commission with respect to all routing options, except ROOC, which the Exchange intends to implement on or about February 14, 2011.

First, the Exchange proposes to move its discussion of available routing options, which is located at the end of the fee schedule, and codify it in Rule 11.9(b)(3)(a)–(s).

Currently, the fee schedule has the following descriptions of routing strategies:

ROUQ	sweeps the EDGA book, then routes to other destination centers.
ROUC	sweeps the EDGA book, then sequentially sweeps the balance, if any, to the following destinations: other destination centers, then Nasdaq OMX BX, NYSE, and the remainder posts to EDGX.
ROUD	sweeps the EDGA book before being routed to other destination centers.
ROUE	sweeps the EDGA book, then other destination centers, and any remainder routes to other market centers.
ROUZ	sweeps the EDGA book before interacting with solicited orders on a price/time priority basis.
INET	sweeps the EDGA book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

ROBA	sweeps the EDGA book and routes to BATS BZX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.
ROBX	sweeps the EDGA book and routes to Nasdaq BX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.
ROBY	sweeps the EDGA book and routes to BATS BYX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.

The Exchange proposes to amend Rule 11.9(b)(2) to cross-reference the routing options listed in proposed Rule 11.9(b)(3), as described in more detail below.

The Exchange proposes to describe how its routing options work in Rule 11.9(b)(3). The Exchange's system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are described in more detail below.

The ROUC strategy currently states that under this strategy an order sweeps the book then sequentially sweeps the balance, if any, to the following destinations: Other destination centers, then Nasdaq OMX BX, NYSE, and the remainder posts to EDGX. The Exchange proposes to amend the description to state that it is a routing option under which an order checks the System for available shares, and then is sent sequentially to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the EDGX Exchange ("EDGX") book. The Exchange will place this proposed description in Rule 11.9(b)(3)(a).

The ROUD strategy description states that it sweeps the book before being routed to other destination centers. The Exchange proposes to revise this description to state that an order routed under this strategy checks the System for available shares and then is sent sequentially to destinations on the System routing table. The ROUE routing strategy currently states that it sweeps the book, then other destination centers, and any remainder routes to other market centers. The Exchange proposes to revise this description to state that it checks the System for available shares, and then is sent to destinations on the System routing table. The revised descriptions of the ROUD and ROUE routing strategies, as described above, will be placed in proposed Rules 11.9(b)(3)(b)–(c).

The INET strategy is currently described as a strategy that sweeps the EDGA book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable. The Exchange proposes to revise the description to read that "such an order checks the System for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on Nasdaq book." The proposed description of the INET routing strategy, as described above, will be placed in proposed Rule 11.9(b)(3)(d).

The Exchange's current description of the ROBA strategy states that it is a strategy under which an order sweeps the book and routes to BATS BZX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution. The Exchange proposes to revise such description to read that such order checks the System for available shares and then is sent to BATS BZX Exchange as an IOC order. If shares remain unexecuted after routing, they are cancelled. The proposed description will be placed in Rule 11.9(b)(3)(e).

ROBX is currently described as a strategy under which an order sweeps the book and routes to Nasdaq BX Exchange as an IOC order, with the remainder being cancelled if there is no execution. This description is proposed to be revised to read that such order "checks the System for available shares and then is sent to Nasdaq BX Exchange as an immediate or cancel (IOC) order. If shares remain unexecuted after routing, they are cancelled."

ROBY is currently described as a strategy under which an order sweeps the EDGA book and routes to BATS BYX Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution. This description is proposed to be revised to state that such order "checks the System for available shares and then is sent to BATS BYX Exchange as an IOC order. If shares remain unexecuted after routing, they are cancelled." The revised descriptions of the ROBX and ROBY strategies are proposed to be placed in Rules 11.9(b)(3)(f)–(g).

The Exchange proposes to codify the following strategies in Rule 11.9(b)(3)(h)–(s) as well:

In proposed rule 11.9(b)(3)(h), the Exchange proposes to describe the ROUT routing option as a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

In proposed rule 11.9(b)(3)(i), the Exchange proposes to describe the ROUX routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

In proposed rule 11.9(b)(3)(j), the Exchange proposes to describe the RDOT routing option as a routing option under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE.

In proposed rule 11.9(b)(3)(k), the Exchange proposes to describe the RDOX routing option under which an order checks the System for available shares, and then is sent to the NYSE.

In proposed rule 11.9(b)(3)(l), the Exchange proposes to describe the ROLF routing option under which an order checks the System for available shares, and then is sent to LavaFlow ECN.

In proposed rule 11.9(b)(3)(m), the Exchange proposes to describe the ROPA routing option under which an order checks the System for available shares and then is sent to NYSE Arca as an immediate or cancel order (IOC). If shares remain unexecuted after routing, they are cancelled.

In proposed rule 11.9(b)(3)(n), the Exchange proposes to describe the IOCX routing option under which an order checks the System for available shares and then is sent to EDGX.

In proposed rule 11.9(b)(3)(o), the Exchange proposes to describe the IOCT routing option under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to EDGX.

In proposed rule 11.9(b)(3)(p), the Exchange proposes to describe the ROOC routing option for orders that the entering firm wishes to designate for participation in the opening or closing process of a primary listing market

(NYSE, Nasdaq, NYSE Amex, or NYSE Arca) if received before the opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening or closing process, they are either posted to the book, executed, or routed like a ROUT routing option, as described in proposed Rule 11.9(b)(3)(h), above.

The Exchange also proposes to introduce the SWPA and SWPB routing strategies and add them to proposed Rules 11.9(b)(3)(q)–(r). Under the SWPA strategy, an order would check the System for available shares and then would be sent to Protected Quotations and only for displayed size. Under this strategy, orders would not have to contain sufficient size to execute against *all* Protected Quotations (emphasis added). If any shares remain unexecuted, such remainder will be cancelled back to the User. Under the SWPB routing strategy, an order would check the System for available shares and then is sent to Protected Quotations and only for displayed size. Under this strategy, orders would have to contain sufficient size to execute against all Protected Quotations. The entire SWPB order will be cancelled back to the User immediately if at the time of entry there is insufficient quantity in the SWPB order to fulfill the displayed size of all Protected Quotations. The Exchange believes that the proposed introduction of the SWPA/B routing options will provide market participants with greater flexibility in routing orders consistent with Regulation NMS. This proposed rule change is similar to NASDAQ Rule 4758(a)(1)(A)(vi) (NASDAQ's "MOPP" strategy) and BATS Exchange, Inc. Rule 11.13(a)(3)(D) ("Parallel T").[4]

The Exchange also proposes to describe the IOCM routing option and add it to Rule 11.9(b)(3)(s).

IOCM is a routing strategy under which an order checks the System for available shares and then is sent to EDGX as an immediate or cancel (IOC) Mid-Point Match ("MPM") order.[5] If there is no liquidity at EDGX to execute at the midpoint, the order is subsequently cancelled.

In addition, the Exchange also believes that the proposed introduction of the routing options, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own. In addition, it will provide additional clarity and specificity to the Exchange's rules regarding routing strategies and will further enhance transparency with respect to Exchange routing offerings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange Users new routing strategies, and with respect to the ROOC option, as soon as the technology for such strategy is completed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available, and, with respect to the ROOC option, available on or about February 14, 2011, and would immediately provide additional clarity and specificity to the Exchange's rules regarding routing strategies and further enhance transparency with respect to Exchange routing offerings. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–01 on the subject line.

[4] *See, e.g.,* NASDAQ Rule 4758, BATS Rule 11.13(a)(3)(D).

[5] EDGX Rule 11.5(c)(7) defines a Mid-Point Match (MPM) order as an order with an instruction to execute it at the midpoint of the NBBO. A MPM order may be a Day Order, Fill-or-Kill Order, or IOC Order. The Exchange notes that members can send in a MPM order directly to EDGX Exchange, Inc. ("EDGX") without routing through the EDGA platform as an IOCM routing option.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *Id.*

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–EDGA–2011–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2011–01 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2131 Filed 1–31–11; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63771; File No. SR–ISE–2011–06]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Listing of Option Series With $1 Strike Prices

January 25, 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 14, 2011, the International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the listing of $1 strike prices. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to amend Supplementary Material .01 to ISE Rule 504 to improve the operation of the $1 Strike Program. Currently, the $1 Strike Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the Exchange was not able to add $32, $33, $34, $36, $37 or $38 strikes during the day.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange proposes to prohibit $2.50 interval strikes below $50 in all $1 Strike Program issues, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") Provisions in ISE Rule 504A.[3] For instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long-term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from the changes to the $1 Strike Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[4] and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Program by providing a consistent application of strike price intervals for issues in the $1 Strike Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–06 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–ISE–2011–06. 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

[3] Rule 504A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[4] 15 U.S.C. 78s(b)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *See* Securities Exchange Act Release No. 63773 (January 25, 2011) (SR–NYSEAmex–2010–109). *See also* Securities Exchange Act Release No.63770 (January 25, 2011) (SR–NYSEArca–2010–106).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–ISE–2011–06 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2118 Filed 1–31–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63772; File No. SR–CBOE–2011–006]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Listing of Option Series With $1 Strike Prices

January 25, 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 12, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE"or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to amend its rules regarding the listing of $1 strike prices. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 to Rule 5.5 to improve the operation of the $1 Strike Program.

Currently, the $1 Strike Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the following strikes were not permitted to be added during the day: $32, $33, $34, $36, $37 and $38.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price. On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange may not list series with $2.50 intervals (*e.g.,* $12.50, $17.50) below $50 under Interpretation and Policy .05 of Rule 5.5 ($2.50 Strike Price Program) for any issue included within the $1 Strike Program, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") Provisions in Rule 5.5A.[5] For

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 5.5A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below

instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from the proposed changes to the $1 Strike Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Program by providing a consistent application of strike price intervals for issues in the $1 Strike Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–006 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–CBOE–2011–006. 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

the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release No. 63773 (January 25, 2011) (SR–NYSEAmex–2010–109). *See also* Securities Exchange Act Release No. 63770 (January 25, 2011) (SR–NYSEArca–2010–106).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available publicly. All submissions should refer to File Number SR–CBOE–2011–006 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2119 Filed 1–31–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63773; File No. SR–NYSEAmex–2010–109]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Regarding the Listing of Options Series With $1 Strike Prices

January 25, 2011.

I. Introduction

On November 24, 2010, NYSE Amex LLC ("NYSE Amex" or "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 the Exchange to modify the operation of the $1 Strike Price Program. The proposed rule change was published for comment in the **Federal Register** on December 14, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Amex has proposed to amend Rule 903 Commentary .06 to modify the operation of the $1 Strike Price Program.

Currently, the $1 Strike Price Program allows the listing of new series with strikes at $1 intervals only if such series have strike prices *within $5 of the previous day's closing price in the primary listing market.*[4] The proposal would allow the Exchange also to: (a) List new series with $1 interval strike prices *within $5 of the official opening price in the primary listing market,* and (b) add $1 interval strike prices *between the closing price and the opening price,* regardless of whether such strikes are within $5 of the previous day's closing price or the day's opening price.

In support of allowing the listing of $1 interval strike between the closing and opening prices, the Exchange stated that, on occasion, the price movement in an underlying security has been so great that listing series with strikes within $5 of the previous day's closing price and the day's opening price would leave a gap in the continuity of strike prices. Thus, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes would be more than $5 from either benchmark. The Exchange proposed that any such discontinuity be avoided by allowing the listing of options on all $1 interval strike prices that fall between the previous day's closing price and the opening price.

The Exchange also has proposed to prohibit the listing of $2.50 interval strikes below $50 in all classes chosen for the $1 Strike Price Program, and in all long-term option series. According to the Exchange, this change is designed to eliminate discontinuities in strike prices and a lack of parallel strikes in different expiration months of the same issue. Currently, Exchange rules provide that the Exchange may not list series within $1 strike price intervals within $0.50 of an existing strike price in the same class, unless the class in question has been selected to participate in the $0.50 Strike Program.[5] In addition, Exchange rules currently stipulate that the Exchange may not list series with $1 strike price intervals for any long-term options (*i.e.,* options having greater than nine months to expiration) under the $1 Strike Price Program.[6]

However, as the Exchange noted in its proposal, due to the prohibition on $1 strike price intervals within $0.50 of an existing strike price, the existence of series with $2.50 interval strikes for classes selected for the $1 Strike Price Program could lead to discontinuities in strike prices and a lack of parallel strikes in different expiration months of the same issue. For example, if a $12.50 strike series was open in a class selected for the $1 Strike Price Program, the Exchange would not be able to list series with a $12 or $13 strike, potentially resulting in sequence of strike prices at irregular intervals (*i.e.,* $10, $11, $12.50, $14, and $15).

To replace these now-forbidden $2.50 interval strikes, the Exchange proposes to allow the listing of one additional series within each natural $5 interval, as follows. The Exchange proposed to permit the listing of a series with a strike $2 *above* the $5-interval strike for each such $5-interval strike above the price of the underlying security at the time of listing. Conversely, the Exchange's proposal would permit the listing of a series with a strike $2 *below* the $5-interval strike for each such $5-interval strike below the price of the underlying security at the time of listing. For example, if the underlying security was trading at $19, the Exchange could list a $27 strike between the $25 and the $30 strikes, and a $32 strike between the $30 and $35 strikes; as well as a $13 strike between the $10 and $15 strikes, and an $8 strike between the $10 and $15 strikes. The Exchange also notes that each such additional series may be listed only if such listing is consistent with the Options Listing Procedures Plan ("OLPP") Provisions in Rule 903A.[7] The foregoing provisions would apply to all classes selected for the $1 Strike Price Program, both with respect to standard and long-term options. In addition, since series with $1-interval strikes are not permitted for most long-term options, the proposal would allow the Exchange to list the long-term strike that is $2 above the $5-interval just below the underlying price at the time of listing. For example, if the underlying security is trading at $21.25, this provision would allow the Exchange to add a $22 strike ($2 above the $20 strike) for the long-term option series.

In support of its proposal, the Exchange stated that the proposed rule change seeks to reduce investor confusion resulting from discontinuous strike prices that has arisen in the operation of the $1 Strike Price Program, by providing a consistent application of strike price intervals for issues in the $1 Strike Price Program.

The Exchange further represented that it has the necessary systems capacity to support the potential increase in new options series that will result from the proposed changes to the $1 Strike Price Program.

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63463 (December 8, 2010), 75 FR 77923 ("Notice").

[4] Rule 903 Commentary .06(b).

[5] *See id.*

[6] *See id.* The standard strike interval for Long-Term Equity Option Series (LEAPs) is $2.50 where the strike price is $25 or less. *See* Rule 903 Commentary .05. However, under a separate provision of the rules, the Exchange may list series with $1 strike prices up to $5 in LEAPS in up to 200 option classes on individual stocks, provided the $1 intervals are not within $0.50 of an existing series with a $2.50 strike price. *See* Rule 903 Commentary .06(e). This provision would not change under the current proposal.

[7] Rule 903A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, an exchange may not list new options series with an exercise price more than 50% above or below the price of the underlying security.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Exchange notes, the proposal is intended to reduce investor confusion resulting from the operation of the $1 Strike Price Program by reducing the occurrences of discontinuities in strike prices and non-parallel strikes in different expiration months of the same issue. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes and market fragmentation. The Commission expects the Exchange to monitor the trading and quotation volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

In approving this proposal, the Commission notes that Exchange has represented that it has the necessary systems capacity to support the potential increase in new options series that will result from the proposed changes to the $1 Strike Price Program.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEAmex–2010–109) be, and it hereby is, approved.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2122 Filed 1–31–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12449 and #12450]

Pennsylvania Disaster #PA–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 01/25/2011.

Incident: Apartment Building Fire.

Incident Period: 01/10/2011.

Effective Date: 01/25/2011.

Physical Loan Application Deadline Date: 03/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Philadelphia.

Contiguous Counties: Pennsylvania:

Bucks, Delaware, Montgomery.

New Jersey:

Burlington, Camden, Gloucester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.500
Homeowners Without Credit Available Elsewhere	2.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12449 5 and for economic injury is 12450 0.

The States which received an EIDL Declaration # are Pennsylvania, New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 25, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–2176 Filed 1–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Availability of U.S. Small Business Administration FY 2010 Service Contract Inventory

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Public Availability of FY 2010 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Small Business Administration 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.* The Small Business Administration has posted its inventory and a summary of the inventory on the Small Business Administration homepage at the following link: *http://www.sba.gov/content/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to William Cody in the Procurement Division at (303) 844–3499 or *William.Cody@sba.gov.*

Dated: January 26, 2011.

Jonathan I. Carver,

Chief Financial Officer/Associate Administrator for Performance Management, Office of the Chief Financial Officer.

[FR Doc. 2011–2184 Filed 1–31–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 28, 2010, vol. 75, no. 208, page 66422–66423. The information collected is used to determine if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought.

DATES: Written comments should be submitted by March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0034.

Title: Medical Standards and Certification.

Form Numbers: FAA Forms 8500–7, 8500–8, 8500–14, 8500–20.

Type of Review: Renewal of an information collection.

Background: The Secretary of Transportation collects this information under the authority of 49 U.S.C. 40113; 44701; 44510; 44702; 44703; 44709; 45303; and 80111. Airman medical certification program is implemented by Title 14 Code of Federal Regulations (CFR) parts 61 and 67 (14 CFR parts 61 and 67). Using four forms to collect information, the Federal Aviation Administration (FAA) determines if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought.

Respondents: Approximately 380,000 applicants for airman medical certificates.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 577,982 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on January 25, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–2074 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35463; Docket No. AB 1043 (Sub-No. 1)]

Montreal, Maine & Atlantic Railway, Ltd.—Modified Rail Certificate—in Aroostook and Penobscot Counties, Me.; Montreal, Maine & Atlantic Railway, Ltd.—Discontinuance of Service and Abandonment—in Aroostook and Penobscot Counties, ME.

Montreal, Maine & Atlantic Railway, Ltd. (MMA) has requested a modified certificate of public convenience and necessity, pursuant to 49 CFR part 1150 subpart C—*Modified Certificate of Public Convenience and Necessity.* MMA wants to operate, on an interim basis, approximately 233 miles of rail line in Aroostook and Penobscot Counties, Me. This line was the subject of the abandonment application granted by the Board in *Montreal, Maine & Atlantic Railway, Ltd.—Discontinuance of Service and Abandonment—in Aroostook and Penobscot Counties, Me.,* AB 1043 (Sub-No. 1) (STB served Dec. 27, 2010).[1]

The State of Maine, by and through its Department of Transportation (State), actively sought to preserve service on the line. To that end, the State, with Board help, reached an agreement to purchase the line from MMA. Should the Board grant MMA abandonment authority, the State proposed to acquire the line pursuant to the class exemption found in *Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions,* 363 I.C.C. 132 (1980) (*Common Carrier*), *aff'd sub nom. Simmons* v. *ICC,* 697 F.2d 326 (DC Cir. 1982) and codified at 49 CFR 1150.22. The State also proposed to find a new operator. MMA agreed to the State's proposal, agreed to provide interim service until the new operator can begin

[1] Specifically, the application, as amended, identified the line to be abandoned as comprising: (1) The Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties; (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County; (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County; (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County and; (5) the Houlton Subdivision, running between milepost 0.0 near Oakfield and milepost 17.27 near Houlton in Aroostook County, and including the B Spur.

operations, and requested that the Board issue a modified certificate in regards to the interim service.

In its December 27, 2010 decision granting MMA's application to abandon the line, the Board found that MMA already met a number of criteria necessary for the issuance of a modified certificate. Specifically, the Board found that the parties had provided: (1) The name and address of the operator, MMA; (2) the information on the abandonment giving rise to the acquisition by the State; (3) the proposed operation by MMA, and (4) a statement by MMA that it will receive no subsidies in connection with its operations, and that there will be no preconditions that shippers must meet to receive service.

The Board granted the certificate to provide interim service in the December 27, 2010 decision, but it required that MMA submit into the record the parties' Interim Service Agreement and information on MMA's liability insurance coverage. Once this information has been filed and the State has acquired the line, the Board stated that the modified certificate would become effective and appropriate notice pursuant to 49 CFR 1150.23 would be published in the **Federal Register**.

On January 18, 2011, MMA filed the requisite data and averred that it conveyed the line to the State on January 14, 2011. MMA's modified certificate has become effective, and it may provide interim service under the certificate.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement at 425 Third Street, SW., Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 24, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–2004 Filed 1–31–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 30186 (Sub-No. 3)]

Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment

ACTION: Notice of the re-opening of the Programmatic Agreement process to update and revise the existing Programmatic Agreement.

SUMMARY: The Surface Transportation Board's (Board's) Office of Environmental Analysis (OEA) (formerly the Section of Environmental Analysis or SEA) prepared a Programmatic Agreement (PA) as the final step in the Section 106 process under the National Historic Preservation Act for Tongue River Railroad Company's (TRRC) application to construct and operate a rail line in southeastern Montana. A final decision authorizing TRRC's construction and operation was issued in October, 2007.

The PA was prepared in consultation with the Section 106 signatory and concurring parties and was executed in November, 2005. The PA expired on November 1, 2010, after an initial term of five years. An Amendment to the PA has been executed by all signatory parties extending the existing PA through September 1, 2011, to allow time to update and revise it.

The revision would take into consideration the designation of the Wolf Mountain Battlefield as a National Historic Landmark on October 26, 2008. Several Federally recognized Tribes have notified the Board of their interest in being included in the consultation process. The Tribes are concerned about impacts related to the rail line construction and operation on Wolf Mountain Battlefield. The alignment approved by the Board in its October 2007 decision runs through the eastern portion of that site.

OEA has recently invited the United States Department of the Interior (National Historic Landmarks Program) and additional Tribes that may have an interest in the project area to participate in the PA consultation process. With this notice, we now invite any other interested parties to participate in the PA consultation process. The updated PA must be executed by September 1, 2011. OEA proposes the following timeline:

February 1, 2011—Inform the public by **Federal Register** notice of the re-opening of the PA process and seek comment from the public (45-day comment period). Transmit a Word version of the existing PA to current and newly designated consulting parties seeking comment, with suggested changes and edits to the existing PA to OEA within 45 days.

March 18—End of public and consulting party comment period.

March 18—April 15—OEA internal review of comments received and revision of the PA in consultation with consulting parties, as appropriate.

May 2—OEA transmits revised PA, which addresses concerns, to consulting parties and members of the public that have shown an interest, for 30-day comment period.

June 1–15—OEA internal review of comments received and revision of the PA in consultation with consulting parties, as appropriate.

June 15—Final PA sent to consulting parties for a 15-day review period.

July 1—Target date for execution of revised PA.

Comments: OEA welcomes at this time any general comments you may have regarding the Board's Section 106 review process for this project, as well as specific comments you may have regarding the revision of the existing PA and OEA's proposed timeline. Comments may be filed electronically via the Board's Web site, *http://www.stb.dot.gov,* by clicking on the "E–FILING" link. Comments may also be submitted by e-mail to Kenneth Blodgett at *blodgettk@stb.dot.gov* or by general delivery to:

Kenneth Blodgett, Surface Transportation Board, Office of Environmental Analysis, 395 E St., SW., Washington, DC 20423.

Please submit all comments by March 18, 2011 and refer to Docket No. FD 30186 (Sub-No. 3) in all correspondence addressed to the Board.

The existing PA and the Amendment to the PA can be viewed on the Board's Web site at "Key Cases" under "Environmental Matters." Contact Kenneth Blodgett at 202–245–0305 with any questions.

Decided: January 25, 2011.

By the Board.

Victoria Rutson,

Director, Office of Environmental Analysis.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–1876 Filed 1–31–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held February 23–25 and March 1–2, 2011, at the Doubletree Hotel Crystal City, 300 Army Navy Drive, Arlington, VA, from 8 a.m. to 5 p.m. each day. The following subcommittees of the Board will meet to evaluate merit review applications:

February 23—Rehabilitation Engineering and Prosthetics/Orthotics Regenerative Medicine.

February 23–24—Aging & Neurodegenerative Disease Psychological Health and Social Reintegration.

February 23–25—Brain Injury Musculoskeletal/Orthopedic Rehabilitation.

March 1—Rehabilitation Engineering and Prosthetics/Orthotics.

March 1–2—Psychological Health and Social Reintegration; Sensory Systems/Communication; Spinal Cord Injury; and Career Development Award Program.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

A general session of each subcommittee meeting will be open to the public for approximately one hour at the start of each meeting to cover administrative matters and to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research applications and critiques.

During the closed potion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the general session should contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, at Department of Veterans Affairs (122), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail *tiffany.asqueri@va.gov* at least five days before the meeting. For further information, please call Mrs. Asqueri at (202) 443–5757.

By direction of the Secretary.

Dated: January 26, 2011.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–2124 Filed 1–31–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
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Part II

Federal Communications Commission

47 CFR Part 1
Practice and Procedure; Amendment of CORES Registration System; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 10–234; FCC 10–192]

Practice and Procedure; Amendment of CORES Registration System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) proposes revisions to the Commission's Registration System (CORES), which is used by individuals and entities doing business with the FCC to obtain a unique identifying number called an FCC Registration Number, or "FRN." The proposed modifications to CORES include: Requiring entities and individuals to rely primarily upon a single FRN that may, at their discretion, be linked to subsidiary or associated accounts; allowing entities to identify multiple points of contact; eliminating some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") at the time of registration; requiring FRN holders to provide their e-mail addresses; modifying CORES log-in procedures; adding attention flags and automated notices that would inform FRN holders of their financial standing before the Commission; and adding data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. These modifications, if implemented, will make CORES more feature-friendly and improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the Federal government.

DATES: Comments must be submitted by interested parties on or before March 3, 2011. Reply comments must be submitted no later than March 18, 2011. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 4, 2011.

ADDRESSES: You may submit comments, identified by MD Docket No. 10–234, FCC 10–192, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.

Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of the Managing Director, (202) 418–0844. For additional information concerning the information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith, (202) 418–0217. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number(s) of the ICR(s) as shown in the Supplementary Information section below (3060–0917 and/or 3060–0918) and then click on either of the ICR Reference Number(s). A copy of the FCC submission(s) to OMB will be displayed.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MD Docket No. 10–234, FCC No. 10–192, adopted November 19, 2010 and released December 7, 2010. The full text of the NPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the Notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number MD Docket No. 10–234. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

This document contains proposed information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due April 4, 2011.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0917.

Title: CORES Registration Form.

Form Number: FCC Form 160.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents and Responses: 150,000 respondents; 150,000 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25,050 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: Not required.

Nature and Extent of Confidentiality: The Commission maintains a system of records, FCC/OMD–9, "Commission Registration System (CORES)," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160. The FCC will also redact PII submitted on this form before it makes FCC Form 160 available for public inspection. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

Needs and Uses: Respondents use FCC Form 160 to register in the FCC's Commission Registration System (CORES). When registering, the respondent receives a unique FCC Registration Number (FRN), which is required for anyone doing business with the Commission. FCC Form 160 is used to collect information that pertains to the entity's name, address, contact representative, telephone number, e-mail address, and fax number. Respondents may also register in CORES on-line at *http://www.fcc.gov/frnreg.* The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both "feeable" and "nonfeeable" services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES system is also a means of ensuring that the Commission operates in compliance with the Debt Collection Improvement Act of 1996.

The NPRM proposes to eliminate some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") at the time of registration; require FRN holders to provide their e-mail addresses; give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

OMB Control Number: 3060–0918.

Title: CORES Update/Change Form.

Form Number: FCC Form 161.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents and Responses: 57,600 respondents; 57,600 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 9,792 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: Not required.

Nature and Extent of Confidentiality: The Commission maintains a system of records, FCC/OMD–9, "Commission Registration System (CORES)," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 161. The FCC will also redact PII submitted on this form before it makes FCC Form 161 available for public inspection. FCC Form 161 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

Needs and Uses: After respondents have registered in the FCC's Commission Registration System (CORES) and have been issued an FCC Registration Number (FRN), they may use FCC Form 161 to update and/or change their contact information, including name, address, telephone number, e-mail address, fax number, contact representative, contact representative's address, telephone number, e-mail address, and/or fax number. Respondents may also update their registration information in CORES on-line at *http://www.fcc.gov/frnreg.* The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both "feeable" and "nonfeeable" services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES system is also a means of ensuring that the Commission operates in compliance with the Debt Collection Improvement Act of 1996.

The NPRM proposes to eliminate some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") at the time of registration; require FRN holders to provide their e-mail addresses; give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

Synopsis of the Notice of Proposed Rulemaking

Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System

1. This Notice of Proposed Rulemaking ("NPRM") proposes amending the Commission's rules to make revisions to the Commission's Registration System, also known as "CORES." Anyone doing business with the Commission is required to first obtain a unique identifying number through CORES called an FCC Registration Number, or "FRN." Among other things, an FRN allows registrants to submit or file applications and remit payments to the Commission. Our proposed changes to CORES would result in customer-related improvements, as well as improvements to the process by which entities and individuals access and make use of information that is contained in CORES. The proposed changes would affect rules governing Practice and Procedure (*see* 47 CFR part 1).

2. We are able to offer these proposed modifications to the current version of CORES based on our own experience with the system since its inception in 2000, as well as on informal suggestions that have been provided by CORES FRN holders themselves. We hope that comments received in this rulemaking will further add to and refine our efforts for improving the CORES system. In addition, we plan to invite the public to participate in a public forum at the FCC's headquarters in Washington, DC to discuss these proposed changes to CORES, and to give interested parties the opportunity to discuss their concerns and suggest further modifications. A public notice announcing the date of the forum will be released shortly. We invite parties to indicate their interest in participating in this public forum by contacting us through the information provided in Section IV.F., below.

3. This proceeding is part of the Commission's larger effort to reform and transform the agency into a model of excellence in government. Like the NPRMs on the FCC's *ex parte* rules and the one focused on the rules governing Commission practice and procedure,[1] this NPRM will reform FCC procedures, modifying CORES to make it easier for individuals [2] and entities [3] to do business with the FCC. In addition, this NPRM is related both to the Commission's new Core Financial System and the development and design of the FCC's new Consolidated Licensing System ("CLS").[4]

4. Our proposed modifications to CORES partly include: Requiring entities and individuals to rely primarily upon a single FRN that may, at their discretion, be linked to subsidiary or associated accounts; allowing entities to identify multiple points of contact; eliminating some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") [5] at the time of registration; requiring FRN holders to provide their e-mail addresses; giving FRN holders the option to create a custom User ID; modifying CORES log-in procedures for entities so as to ease use by multiple individuals; adding attention flags and notices that would inform FRN holders of their financial standing before the Commission when logging onto CORES; and adding data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. These modifications, if implemented, will make CORES more feature-friendly and will eliminate some of the system's current limitations. They will also improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the Federal government.

II. Background

5. The Commission is required in a variety of contexts to manage and collect substantial sums of money, including annual regulatory fees and application fees [6] and civil monetary penalties.[7] The Commission also auctions various licenses through competitive bidding and administers the collection of payments for these licenses.[8] In addition, the Commission directs the collection of mandated contributions to the Universal Service Fund ("USF") and other statutory programs.[9]

6. In operating these programs, the Commission is subject to a variety of Federal statutes designed to ensure that the Government's financial management systems consistently and accurately report assets, liabilities, revenues and expenditures.[10] In particular, the Commission is subject to the Debt Collection Improvement Act of 1996 ("DCIA"), which sought to address Congressional concerns that debts owed to the Federal government were not being properly collected.[11]

7. To improve its collection activities, the Commission established an internal revenue management system that supports application and regulatory fee accounting, spectrum auction loan portfolio management, accounting for auction proceeds, accounting for enforcement actions, and other accounts receivable of the Commission. In developing this revenue management system, it became apparent that persons doing business with the Commission, as that term is defined by the DCIA,[12] were identified in various ways in our filing and licensing systems that made unified accounting and revenue management difficult. To address this problem, the Commission developed CORES.

8. CORES is a Web-based, password-protected, registration system that assigns a unique 10-digit FRN to a registrant for use when doing business with the FCC. These FRNs are used by all Commission systems that handle financial, authorization of service, and enforcement activities, and enable our customers to be more easily identified as the filers of applications, reports, remittance payments and other documents with the FCC. CORES was designed to serve as a central standard repository for basic regulatee and licensee information, and to help the Commission more effectively forecast, assess and collect regulatory fees; track enforcement of fines and forfeiture actions; monitor and collect penalties; manage the grant of waivers and exemptions; and, provide information to the public.[13]

9. When CORES first became operational on July 19, 2000, the public was permitted to obtain FRNs to be used on Commission filings on a voluntary basis.[14] Then, by way of rulemaking effective December 3, 2001, the Commission established that FRNs were to be used on Commission filings on a mandatory basis.[15] Since then, in an effort to limit the unnecessary use of social security numbers in agency systems and programs, the Commission

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[1] *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules,* GC Docket No. 10–43, Notice of Proposed Rulemaking, 25 FCC Rcd 2403 (2010); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* GC Docket No. 10–44, Notice of Proposed Rulemaking, 25 FCC Rcd 2430 (2010). *See also FCC Proposes Rule Changes to Improve Decision-Making and Efficiency, Promote Participation in FCC Proceedings,* 2010 WL 589844 (rel. February 18, 2010) (news release announcing the commencement of the two previously-mentioned proceedings).

[2] The terms "individuals" and "persons" are used synonymously in this NPRM.

[3] An "entity" is any business or organization. This includes public or private, and profit or not-for-profit, organizations.

[4] *Federal Communications Commission (FCC) To Hold April 7, 2010 Workshop on Development of Consolidated Licensing System,* MD Docket No. 10–73, Public Notice, 25 FCC Rcd 3176 (2010). *See also* the Commission's Web page on the effort to develop the consolidated licensing system, found at *http://reboot.fcc.gov/reform/systems/cls.*

[5] For individuals, the TIN is their social security number.

[6] *See* 47 U.S.C. 159 and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009,* MD Docket No. 09–65, Report and Order, 4 FCC Rcd 10301 (2009) (regulatory fees); 47 U.S.C. 158 and *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1107 of the Commission's Rules,* GEN Docket No. 86–285, Order, 23 FCC Rcd 14192 (2008) (application fees).

[7] *See, e.g.,* 47 U.S.C. 503; 47 CFR 1.80; *see also Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines,* CI Docket No. 95–6, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied,* 15 FCC Rcd 303 (1999).

[8] *See* 47 U.S.C. 309(j).

[9] *See* 47 U.S.C. 254(d); 47 CFR 54.706.

[10] *See, e.g.,* 31 U.S.C. 3512(b) (mandating the establishment and maintenance of systems of accounting and internal controls); 4 CFR 102.1(a) (requiring agencies to "take aggressive action, on a timely basis, to collect all claims of the United States"); 4 CFR 102.17 (requiring agencies to establish procedures to identify the causes of overpayments, delinquencies, and defaults, and the corrective actions needed).

[11] Public Law 104–134, 110 Stat. 1321 (1996), codified at 31 U.S.C. 3701, *et seq. See United States* v. *Texas,* 507 U.S. 529, 536–37 (1993) (Debt Collection Act was passed "in order to strengthen the Government's hand in collecting its debts").

[12] The DCIA, 31 U.S.C. 7701(c)(2), states that "a person shall be considered to be doing business with a Federal agency if the person is—

(A) A lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

(B) An applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;

(C) A contractor of the agency;

(D) Assessed a fine, fee, royalty or penalty by the agency; and

(E) In a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency."

[13] *See Office of the Managing Director Implements the FCC Registration Number (FRN) and Commission Registration System (CORES) Registration Process Effective March 27, 2000,* DA 00–407, Public Notice, 15 FCC Rcd 16427 (2000).

[14] *See New Commission Registration System (CORES) to be Implemented July 19,* DA 00–1596, Public Notice, 15 FCC Rcd 18754 (2000).

[15] *See Amendments of Parts 1, 21, 61, 73, 74 and 76 of Commission's Rules, Adoption of Mandatory FCC Registration Number,* MD Docket No. 00–205, Report and Order, 16 FCC Rcd 16138 (2001) ("*2001 CORES Order*").

has expanded the use of FRNs to other purposes beyond compliance with the DCIA.[16] Now, based on several years of experience with CORES and the FRN registration process, we now wish to modify and enhance CORES to better serve the interests of the Commission and the public by identifying areas of improvement in the way customers interact with and make use of CORES, thus enabling us to improve the system's features and eliminate or reduce limitations of the system in its current state.

10. *Consolidated Licensing System.* Recently, the Commission announced its intent to develop and deploy an agency-wide Consolidated Licensing System ("CLS") in an effort to improve its spectrum management and to develop a transparent, easily accessible, data driven, efficient, cost-effective and green consolidated licensing system.[17] The CLS is expected to consolidate a number of licensing systems and databases currently used by the Commission's Bureaus and Offices, including the Antenna Structure Registration System ("ASR") (managed by the Commission's Wireless Telecommunications Bureau); the Cable Operations and Licensing System ("COALS") (managed by the Media Bureau); the Consolidated Database System ("CDBS") (managed by the Media Bureau); the Experimental Licensing System ("ELS") (managed by the Office of Engineering and Technology); the International Bureau Filing System ("IBFS") (managed by the International Bureau); and, the Universal Licensing System ("ULS") (managed by the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau). Among other things, the Consolidated Licensing System is expected to establish a single consolidated form for filing different types of license application, permit a single sign-on to all of the underlying Commission systems, and create an enhanced environment for accessing and searching Commission data. The present proceeding is viewed by the Commission as one necessary step of the overall development of the CLS.

III. Proposed Changes to Cores

11. In the discussion that follows, we seek comment on specific modifications proposed for CORES. As described above, one of the primary goals of this proceeding is to improve the customer interface with CORES so that customers can use the system in a more efficient and effective manner. To that end, we encourage commenters in this proceeding to address problems that they have experienced while navigating CORES and using their FRN(s) on subsequent remittance payments, filings and applications before the Commission. We ask that commenters recommend specific measures that we could take that would ease any such navigation and usage problems. Commenters should also propose measures that we could take to simplify the registration process, as well as measures that would enhance their ability to use the Commission's other automated systems, in light of the Commission's intent to develop an agency-wide consolidated licensing system, as described above.

A. A Single FRN

12. In the *2001 CORES Order,*[18] we concluded that requiring entities and individuals doing business with the Commission to obtain an FRN would "improve the management of our financial systems," and was "part of a long-range solution to better manage our financial systems."[19] Accordingly, we adopted a 10-digit unique identifier called the FRN, and chose CORES as the automated system for assigning FRNs to entities and individuals doing business with the Commission.

13. Since the creation of CORES, entities have been able to obtain multiple FRNs in order to permit different members of their corporate family to obtain their own individual FRNs, regardless of whether those entities had different taxpayer identification numbers ("TINs"),[20] and to allow entities to organize their dealings with the Commission along logical business lines.[21] As a result of this policy, however, it is difficult for the Commission to identify all the FRNs that are held by the same entity and tie them together in order to examine the entity's entire course of dealing with the agency. Although entities are required to provide their TIN during the FRN registration process, the data reported by entities has not always been consistent. In many cases a TIN has not been reported at all. For example, in some instances, due to exceptions allowed by the Commission, entities are not required to provide their TIN during the CORES registration process.[22] In other cases, entities have inappropriately selected a TIN exception reason during the CORES registration process that is not intended to apply to them, thereby circumventing the requirement that they provide a valid TIN.

14. That the Commission is unable to use CORES to electronically link all of an entity's valid FRNs has several consequences. First, it hinders the Commission's ability to fulfill its debt collection obligations under the DCIA. Second, it limits the effectiveness of the Red Light Display System [23] as (for example) it is used to review applications to participate in Commission auctions.[24] Third, it

[16] *See* para. 1, *supra.* These additional uses for the FRN comport with a government-wide effort to safeguard personally identifiable information by reducing the unnecessary use of social security numbers and exploring alternatives to serve as a personal identifier for Federal programs. *See, e.g., Safeguarding Against and Responding to the Breach of Personally Identifiable Information,* OMB Memorandum M–07–16 (May 22, 2007).

[17] *Federal Communications Commission (FCC) To Hold April 7, 2010 Workshop on Development of Consolidated Licensing System,* MD Docket No. 10–73, Public Notice, 25 FCC Rcd 3176 (2010).

[18] *See supra* n. 14.

[19] *2001 CORES Order,* 16 FCC Rcd at 16139, para. 3.

[20] A TIN is a unique identifier assigned to an entity for tax payment purposes. A TIN may either be a Social Security Number ("SSN") assigned to an individual by the Social Security Administration ("SSA"), or an employer identification number ("EIN") assigned to a business or organization by the Internal Revenue Service ("IRS").

[21] *2001 CORES Order,* 16 FCC Rcd at 16141, para. 12.

[22] Currently, entities are permitted to select from among six "exceptions" to the general requirement that they furnish a TIN during their CORES registration process, while individuals are allowed to select from four exception reasons. For example, foreign citizens and entities that do not maintain a business presence in the U.S. may be eligible to claim an exception to this requirement. Later in this NPRM, we propose to eliminate or otherwise modify some of our TIN exception reasons for CORES registrants.

[23] The Commission's Red Light Display System ("RLDS") enables entities and individuals doing business with the Commission to determine if they have any outstanding delinquent debt. When an entity/individual applying for or seeking benefits is delinquent in non-tax debts owed to the Commission, we are required by law to postpone action on applications and other requests until the outstanding debt is repaid. *See http://www.fcc.gov/debt_collection.* RLDS is electronically checked when electronic license applications are received by the Commission.

[24] The FCC's auction short-form application requires applicants to certify under penalty of perjury that they, their affiliates, their controlling interests, and the affiliates of their controlling interests, as defined by Section 1.2110 of the Commission's rules, are not in default on any payments for Commission licenses (including down payments), and that they are not delinquent on any non-tax debt owed to any Federal agency. *See* 47 CFR 1.2105(a)(2)(x), 1.2105(b)(1), and 1.2110; *see also Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures,* WT Docket No. 97–82, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293, 15317 para. 42 and n.142 ("If any one of an applicant's controlling interests or their affiliates * * * is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files

Continued

inconveniences our licensing and enforcement bureaus, and even our licensees themselves, in their efforts to remember, recognize, and manage the various FRNs obtained throughout their course of business with the Commission.

15. After nearly a decade of experience with CORES, for these reasons expressed here, including our overarching effort to reform how the FCC interacts with the public and ongoing reform of the way the Commission collects and retains data, we tentatively conclude that it is in the best interest of all parties for the Commission to be able to view and search information on entities registered in CORES by a single unique identifier. The benefits of requiring entities to identify themselves in Commission filings and applications by a single unique identifier include administrative simplicity, enhanced search capability, and improved reliability of basic company data. In addition, limiting entities to a single FRN will enhance our ability to inform regulatees of financial and other administrative-related issues, such as past due regulatory fees and impending license renewal deadlines, through e-mail or on-line notification messages. In section III.K, below, we propose to institute a company-centric "dashboard" that filers would see upon login, through which the filer would have the ability to review the progress on their filings, fees that are due, the history of files the filer has submitted, as well as other important information the filer may need. Similarly, in section III.G, we propose to post warning flags to each entity's CORES account indicating their status in the Commission's Red Light Display System and their debarment status. Such features could only be made possible by limiting entities to a single company-wide identifier. We believe that the benefits of such notifications and an entity-wide license administration "center" far outweigh any potential burden. Therefore, we propose to limit entities and individuals registered in CORES to the use of a single FRN that incorporates subsidiary FRNs or sub-accounts, as described below.[25]

16. As an initial matter, we clarify that, for the purposes of this discussion, an entity shall be defined by the use of a single TIN. Thus, under the proposals described below, affiliated entities that are part of a larger corporate structure would not be limited to use of the same FRN if they have obtained separate TINs from the IRS.

17. Although we propose to permit only a single FRN per entity, we tentatively conclude that entities should nevertheless retain the ability to organize their filings and other dealings with the Commission among logical business lines of their choosing. This particularly applies to larger businesses and organizations that do business with the Commission through various sources, business operations, *etc.,* and therefore would prefer to have several registrants associated with their single FRN.

18. There is any number of possible methods that could be implemented to limit entities to the use of a single FRN in CORES while still affording them the ability to establish multiple registrants within that FRN. One such option would be to modify the structure of existing FRNs to incorporate an alpha-numeric suffix that would allow entities to populate a single FRN with sub-accounts for additional registrants. Under this proposal, which we shall refer to as "Option 1," an entity would be permitted to utilize a single ten-digit FRN for all of its dealings with the FCC, but would have the ability to create an unlimited number of sub-accounts that could be assigned to organizational units, such as a geographic district served by the entity or a distinct line of business conducted by the entity, or even to particular employees. These sub-accounts would be distinguished by a unique multi-character suffix that would trail the entity's single ten-digit FRN. For example, under Option 1, an entity with the single FRN 1234–5678–90 may decide to establish three sub-accounts within its FRN: One for Jane Q. Smith (perhaps expressed 1234–5678–90–JQS), one for its West Coast Operations (perhaps expressed 1234–5678–90–WCO), and one for Broadcast License WXYZ (perhaps expressed 1234–5678–90–XYZ). These suffixes would not be limited to letters; an entity could just as easily create a sub-account expressed with a purely numeric extension, such as 1234–5678–90–001. Alternatively, the Commission could automatically generate numeric suffixes for each sub-account (that is, –001, –002, –003, *etc.*), while providing entities with the option to subsequently customize these suffixes as it sees fit. Thus, this proposal would require each entity to surrender all but one of its ten-digit FRNs, which would serve as the foundation of all of its future sub-accounts. Under this proposal, entities would have the ability to create and use additional sub-accounts within their single FRN according to their business and administrative needs. We seek comment on this proposal, along with the alternative outlined above. If adopted, should entities have the ability to choose which of their existing FRNs would serve as the ten-digit FRN core? If so, how much time should entities have to make such a selection? Commenters should consider any potential burden that may be incurred through the adoption of these options.

19. Another proposal, which we shall refer to as "Option 2," would enable entities that currently hold multiple FRNs to retain all of their various FRNs, which would be electronically linked to each other through the assignment of an identical prefix that would precede each of the entity's ten-digit FRNs. It would not be necessary for the user to input this prefix; the system would automatically access and attach the appropriate prefix whenever one of an entity's assigned FRNs was used. Although the prefix would be visible to the entity, it would only be used for internal purposes by the Commission to link all of an entity's FRNs for the purposes identified above. Thus, under Option 2, entities will be able to retain all of their current FRNs, and would not be required to re-register in CORES, reducing the potential burden on both regulated entities and the Commission, especially in the wake of future mergers and acquisitions among different entities that currently hold an FRN in CORES. We seek comment on this option, as well as on any other proposal for limiting entities to a single FRN, such as requiring entities to manually select one of their existing FRNs to serve as their "primary" FRN, while their remaining FRNs would be automatically converted to subsidiary, or sub-FRNs, which would be electronically linked to its primary FRN.

20. In addition, we seek comment on whether we should also allow an FRN registered to an individual to have sub-accounts in much the same way as

it[s] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) * * * and will not be eligible to participate in Commission auctions."). Absent linked FRNs, every FRN of each relevant entity must be reviewed separately in RLDS. The inability to easily and simply link multiple FRNs therefore limits the ability of auction participants and the Commission to use the RLDS to determine whether an auction applicant complies with the Commission's competitive bidding rules.

[25] In theory, this proposal only needs to apply to entities. However, in practice, we seek to apply it to individuals as well. CORES is populated with many instances in which individuals hold multiple FRNs. These instances are most likely the result of individuals who have forgotten their FRNs or FRN passwords over the course of time and who then chose to electronically register for another FRN, instead of resetting their original password with the assistance of our Customer Support Help Desk.

business entities under either option outlined above, or whether individuals should be prohibited from utilizing sub-accounts or sub-FRNs. For example, individuals may find it beneficial to create sub-FRNs for use by outside attorneys or consultants. We encourage commenters to provide examples of where an individual's business needs at the Commission would benefit from being able to populate sub-accounts to their FRN.

21. Our current process for how entities and individuals obtain an FRN from CORES requires that only a single registrant may be associated with each FRN. However, any proposal to limit entities to the use of a single FRN—regardless of the approach that is eventually adopted—needs to address the need for multiple individuals to utilize the same FRN. This need is especially evident for most businesses and organizations, but it may apply to some individuals as well. We seek comment generally on if (and, if so, how) entities and individuals will wish to wield administrative access rights and authority for their single FRN, or for multiple FRNs that are electronically linked to each other. Should CORES allow multiple individuals to be able to register with and access a single FRN with their own unique user name and password? Or rather, should CORES adopt a new feature in which the FRN has a "primary registrant" that is granted exclusive administrative access and authority for adding subsequent registrants to the FRN and allowing registrant access to the FRN? We seek comment on the administrative burden of having a primary registrant. Should individuals with administrative rights to an entity's primary FRN have rights to alter any data contained in any of the entity's sub-FRNs? Why or why not? What about the reverse: Should individuals with administrative rights to a particular sub-FRN be restricted from altering data in the primary or another sub-FRN? With any approach taken, the Commission can provide user-driven options for such actions as disabling an FRN's sub-account feature or otherwise managing how subsequent registrants are added to a single FRN. We seek comment on these thoughts, as well as on other administrative access and authority concerns.

22. In the event that we adopt a process for limiting entities and individuals to a single FRN (as opposed to Option Two, above, which would simply assign an identical alpha-numeric prefix to existing FRNs held by a particular entity), we seek comment on the manner in which previously-registered entities and individuals should migrate to their single FRN. How and when should a single FRN for each entity/individual be established? Should the Commission issue a newly assigned FRN to each entity/individual? Should entities and individuals with two or more FRNs currently registered in CORES be permitted to select which single FRN they will use on a going forward basis (while the Commission de-activates the entity's remaining unselected FRNs), or should they simply be assigned the most recent one they have used? We seek comment on whether previously-registered entities and individuals with a single FRN should simply keep their existing FRN, and not migrate to a newly assigned number.

23. Finally, we invite parties to offer other approaches for data migration within CORES. In addition, we seek comment on whether the migration to a single FRN should occur automatically—and if so, under what criteria—or whether entities and individuals should be required to actively interface with CORES to establish their single FRN. If we adopt a scenario where previously-registered entities and individuals are to interface with CORES to establish a single FRN, should registrants be required to complete the process within a particular time frame after the effective date of the rules adopted in this proceeding before all of their FRNs are automatically deactivated? What should that time frame be?

24. As mentioned above, we plan to invite the public to participate in a public forum at the FCC's headquarters in Washington, DC to discuss our various proposals to limit entities and individuals to a single FRN. All interested parties will have the opportunity to discuss their concerns and to suggest other solutions that would accomplish the goals outlined here with a minimal amount of disruption on the industry. A public notice announcing the date of the forum will be released shortly. We invite parties to indicate their interest in participating in this public forum by contacting us through the information provided in Section IV.F., below.

B. Multiple Registrants With Multiple Points of Contact

25. Currently, CORES does not permit FRN holders to identify anyone other than themselves as the sole point of contact for their FRN. Such contact information is often used by the Commission to contact entities and individuals to collect delinquent debt or resolve remittance issues that may arise during their course of dealing with the agency. We have come to believe that the inability of FRN holders to identify additional points of contact for their FRN unnecessarily limits the FRN's usefulness to the FRN holder, as well as to the Commission. Because the sole point of contact attributed to the FRN is not always the appropriate individual to resolve a particular issue or to provide necessary information, it is not uncommon for delays to occur while the appropriate contact is established. For this reason, we tentatively conclude that FRN holders should have the ability to voluntarily provide additional points of contact for their FRNs, as well as for each sub-account or sub-FRN as the case may be. We seek comment on this conclusion.

26. We propose that FRN registrants would be permitted to voluntarily provide point of contact information for certain specific, pre-designated functions, such as "Accounting," "Billing," "Licensing," "Legal Issues," *etc.* Points of contact provided by an FRN holder would not become registrants to the FRN, and therefore would not be able to gain access to confidential data submitted by the entity to CORES. They would simply be static points of contact that have been established by one of the FRN's registrants to address particular issues or subject matter as needed. We seek comment on this proposal. Also, in addition to the functions listed above, what other pre-designated subject matter categories should be made available for an FRN registrant to select when identifying individuals that will serve as points of contact? Should FRN holders have the ability to create their own categories of uses for contacts that they provide, or should they be limited to a menu of pre-designated functions offered by the Commission? We seek comment on these questions.

27. Finally, we seek comment on whether we should extend this proposal for multiple points of contact to FRN holders who are individuals. Under what circumstances and to what extent may individuals desire to identify multiple points of contact to be associated with their FRN? Should individuals have the same range of choices as entities for points of contact? In what ways, if any, should the point of contact options for individuals differ from those for entities?

C. Elimination of Certain TIN Exception Reasons

28. *Foreign Entities and Non-United States Citizens.* As noted above, if you are doing business with the Commission, you need to register for an

FRN.[26] This includes foreign registrants and non-United States citizens who are generally required to provide their TIN before completing the CORES registration process. In some instances, foreign entities do not have a taxpayer identification number. Since the inception of CORES, the Commission has permitted foreign entities and individuals to decline to provide their TIN in certain circumstances. With regard to foreign entities, the prevailing logic was that such businesses and organizations are not required to obtain an employer identification number ("EIN") from the Internal Revenue Service ("IRS"), and are thus unable to furnish a TIN during their CORES registration process. Therefore, we have historically allowed such entities to complete the CORES registration process without providing a valid TIN.[27] Similarly, because individuals who are not U.S. citizens and who are not employed within the United States typically are not issued a social security number ("SSN") by the U.S. Social Security Administration ("SSA"), we have previously permitted individuals to complete the CORES registration process without providing a valid TIN by certifying that they have not been issued a SSN because they are not U.S. citizens.

29. As originally crafted, our TIN exception reason for foreign entities failed to recognize that foreign entities operating inside the U.S., or who have employees working in the United States, are required to obtain an EIN from the IRS.[28] Thus, we tentatively conclude that foreign entities operating within the U.S. should now be required to provide their EIN when seeking to obtain an FRN through CORES. We seek comment on this conclusion. With regard to foreign entities that do not operate in the United States nor have employees in the United States, we wish to operate from the assumption that they may still be able to provide some form of equivalent tax identification number issued by their respective home government. We seek comment on the validity of our assumption and request that commenters provide specific examples of developed countries whose governments do not employ any concept of a TIN for their businesses and organizations. Should we determine that our assumption is accurate (*i.e.,* that the use of taxpayer identification numbers is a near-universal concept), we would eliminate our taxpayer identification number exception reason for all businesses and organizations and require such entities to furnish their country's equivalent taxpayer identification number as issued by their home government. To distinguish foreign equivalent taxpayer identification numbers from IRS-issued EINs in CORES, we propose that all foreign taxpayer identification numbers would receive a prefix consisting of their respective country's international two-character country code. To ensure that we are able to uniquely identify every entity that does business with the Commission and deter the intentional misuse of this exception by domestic businesses seeking to avoid reporting their correct EINs,, should we require all foreign business and organizations to furnish the Commission with a copy of their country's taxpayer identification documentation at the time of registering an FRN in CORES? If so, what would be the most effective and least burdensome method for foreign entities to submit a copy of their country's taxpayer identification documentation? Morevoer, we seek comment on whether foreign entities that are existing license holders should submit a copy of their country's taxpayer identification documentation.

30. Similarly, we propose to eliminate our TIN exception reason for foreign individuals. We note that foreign nationals working in the United States, including all individuals working in the United States on an immigrant visa, are issued an SSN by the SSA.[29] In addition, some temporary visitors, students, and workers on non-immigrant visas are allowed and sometimes required to obtain an SSN.[30] We therefore conclude that in the vast majority of cases, individuals should be able to furnish a valid SSN as issued by the SSA. We also note that there is another type of TIN that may be held by foreign individuals that CORES has never been programmed to accept. This TIN is known as an Individual Taxpayer Identification Number, or ITIN. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, an SSN from the SSA.[31] ITINs and SSNs share the same nine-digit 000–00–0000 data structure. Only non-U.S. citizens can apply for an ITIN.[32] We note that individuals who already have a valid SSN should not apply for an ITIN because it is not permissible for an individual to hold both an SSN and an ITIN.[33] We tentatively conclude that individuals should be permitted to use their ITIN in place of an SSN when applying for an FRN. We seek comment on this conclusion.

31. Furthermore, foreign individuals who are unable to furnish either an SSN or an ITIN as their TIN may still be able to provide some form of equivalent taxpayer identification number or general identification number that has been issued by his or her home government which the Commission could accept in place of an SSN or ITIN. We seek comment on this matter. We specifically seek examples of developed countries whose governments do not assign taxpayer identification numbers or utilize a general identification system for their citizens. If used, we propose to identify foreign-issued tax identification numbers (or the equivalent) for individuals in CORES by adding a prefix that represents the individual's applicable international two-character country code. We seek comment on whether we should require supporting documentation to be furnished to the Commission at the time of registering an FRN. In particular, parties should indicate whether requiring the submission of foreign-equivalent taxpayer identification numbers and supporting documentation would help ensure that we are able to uniquely identify every individual that does business with the Commission, and would deter the intentional misuse of this exception by individuals seeking to avoid reporting their correct social security numbers or attempting to register simultaneously under multiple aliases. We seek comment on these potential measures, including the most effective and least burdensome method to submit such supporting documentation.

32. Finally, we seek comment on how the Commission should treat FRNs that were obtained by foreign entities and foreign individuals through the use of the previously-mentioned TIN exception reasons. Should these existing FRN holders be "grandfathered" into CORES, or should they be required to provide a valid SSN, ITIN, or foreign equivalent taxpayer identification number within a particular time frame?

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[26] *See* n.2, *supra.*

[27] *See 2001 CORES Order,* 16 FCC Rcd at 16142, para. 18. *See also* the Frequently Asked Questions section on the Commission's CORES Web site, *https://fjallfoss.fcc.gov/coresWeb/html/tin.html#q52,* "What if my entity does not have a TIN?"

[28] *See* Internal Revenue Service Form SS–4 Application for Employer Identifier Number.

[29] *See* "Social Security Card Application Guide," *https://www.usimmigrationsupport.org/social-security-card.html.*

[30] *Id.*

[31] *See https://www.irs.gov/individuals/article/0,,id=96287,00.html,* Individual Taxpayer Identification Number (ITIN).

[32] *See* "ITIN Application," *https://www.usimmigrationsupport.org/itin.html.*

[33] *Id.*

How long of a waiting period is appropriate to allow for previously registered foreign entities and foreign individuals to provide one of the aforementioned valid identifiers? If adopted, we tentatively conclude that affected entities and individuals would be electronically notified of the requirement that they provide a valid identifier upon logging in to the system. Thus, we tentatively conclude that foreign entities and foreign individuals must furnish their TIN or TIN-equivalent documentation within thirty days of their first log-in after the effective date of any final rules adopted in this proceeding. We seek comment on this conclusion.

33. *Petitioners and Non-Feeable Complainants.* Petitioners and non-feeable complainants are not required by Commission rules to provide their TIN to the Commission, nor to obtain an FRN,[34] under the rationale that non-feeable items do not involve payments to the Commission. When CORES was first developed, however, we understood that some of these same petitioners and non-feeable complainants may voluntarily wish to obtain an FRN, possibly for internal record-keeping purposes. Thus, to reduce the regulatory burden on such entities, we established an exception permitting entities and individuals to obtain an FRN without providing their TIN by certifying during the registration process either that "the individual is a petitioner" or "the entity (business or organization) is a petitioner." However, our experience since then has underscored that this particular TIN exception reason provides an opportunity for entities and individuals who file license applications or otherwise conduct business with the Commission to circumvent their TIN provision requirement by falsely identifying themselves in CORES as petitioners or non-feeable complainants. We therefore propose to eliminate this TIN exception reason. We seek comment on this proposal and on how we should treat FRNs that were obtained by entities and individuals holding licenses or other authorizations (*i.e.,* doing business with the Commission) through inappropriate use of this TIN exception reason.

34. *Temporary Exceptions.* Under our existing processes, entities who have applied for (but have not yet received) their EIN from the IRS are considered temporarily exempt from providing a TIN when registering in CORES. Similarly, individuals who have applied for, but have not yet received, their SSN from the SSA are temporarily exempt from providing their TIN. In CORES, these exception reasons are phrased as "The EIN has been applied for" and "Applied for" for entities and individuals, respectively. Unfortunately, CORES does not have the capability to automatically revisit these temporary exceptions, and often entities and individuals claiming this exception are awarded a license and fail to provide a valid TIN at a later date. Thus, as a practical matter, entities and individuals who have claimed this temporary TIN exception are effectively treated by the Commission as having received permanent waivers of the TIN provision requirement. To remedy this, we propose to establish a time frame within which such entities and individuals must subsequently provide their TIN. The time remaining before the expiration of this waiver would be viewable when the FRN holder accesses CORES. FRNs that have been obtained through this TIN exception reason would automatically expire and be de-activated after this time period unless a valid TIN is subsequently provided. We seek comment on this proposal. Specifically, we seek comment on the appropriate time frame for the Commission to wait for entities and individuals to furnish their newly acquired TINs to the Commission before deactivation of their FRNs. We note that, according to the IRS Web site, an entity may obtain an EIN immediately upon completing an on-line form,[35] while it may take "several weeks" for foreign workers to obtain an SSN.[36] Thus, we tentatively conclude that entities should be required to provide their newly-obtained EIN to the Commission within fifteen days, and that individuals should be required to provide their newly-acquired SSN to the Commission within sixty days. We seek comment on these tentative conclusions. In the event that entities and individuals are unable to obtain a TIN within our established time limits, we will set aside their FRNs for an additional period of time so that they may retain their current FRNs once they obtain their TIN, thus preventing the need to re-register in CORES. Such "reserved" FRNs will be inactive, however, and will not be able to be used on remittance payments or applications filed with the Commission until a TIN is provided. We seek comment on the length of time that such FRNs should remain in an inactive status before considered abandoned by the FRN holder and deleted from our system.

35. *Exempted Activities.* Currently, CORES allows both entities and individuals to select a TIN exception reason known as "exempted activities" when registering an FRN. For an entity, this exception applies when IRS rules do not require the acquisition of an EIN due to the nature of the organization. For now, we continue to believe that, while rarely used, this remains a valid TIN exception reason for entities.[37] Therefore, we recommend that this exemption be maintained for future use. For individuals, however, we propose to discontinue the availability of this TIN exception reason. As we have discussed above, we now believe that all individuals—be they domestic or foreign—are able to provide either a valid SSN, or ITIN, or a foreign equivalent taxpayer identification number or general identification number, as issued by their home government. We seek comment on this tentative conclusion. We are concerned, however, that the phrase used by the CORES system to identify this exception, "exempted activities," is vague and confusing, and could result in tax exempt entities (and possibly individuals, should we ultimately reject our tentative conclusion above) erroneously attempting to use it to avoid providing their TIN. In this proceeding, we seek to further our understanding of the circumstances that may lead the IRS or SSA to exempt particular entities and individuals from the requirement of obtaining an EIN or SSN. Should we require documentation to be provided by entities claiming the proper use of this exemption? What documentation should we require prospective FRN registrants to provide in order to use this TIN exception?

36. *Amateur Club.* Currently, amateur radio clubs wishing to obtain an FRN through CORES are not required to provide a valid TIN of one of their members. Instead, such clubs may complete the registration process by selecting an exemption labeled "amateur club." We propose to keep the "amateur club" TIN exception reason, but tentatively conclude that we should rename "amateur club" to "amateur

[34] *See* the Frequently Asked Questions section on the Commission's CORES Web site, *https://fjallfoss.fcc.gov/coresWeb/html/know.html#q103*, "What do you mean by "doing business" with the FCC?"

[35] *See http://www.irs.gov/businesses/small/article/0,,id=102767,00.html?portlet=4.*

[36] *See http://www.ssa.gov/pubs/10107.html#time.*

[37] Virtually all entities are required to obtain an EIN, including foreign companies with employees in the U.S., non-profit organizations, church or church-controlled organizations, farmers cooperatives, State and local governments, Indian Tribal governments, Federal agencies, the U.S. military and the National Guard. *See* IRS Form SS–4 Application for Employer Identification Number.

radio club" for added clarity. In addition, we propose to limit the use of FRNs obtained through the use of the "amateur club" TIN exception reason to applying for amateur licenses only. To apply for other types of licenses, an amateur radio club would be required to furnish a valid TIN. We seek comment on these conclusions. What documentation should we require of amateur radio clubs when seeking to use this TIN exception reason?

37. *Tribal Government or Entity.* A TIN exception reason has been offered to Tribal governments or entities since the inception of CORES. In some cases, Commission staff has independently assigned an FRN to Tribal governments to enable their use of our Tower Construction Notification System (TCNS), which allows Federally-recognized Indian Tribes and Alaska Native Villages, Native Hawaiian Organizations, and State Historic Preservation Officers to receive, and respond to, notifications about a proposed tower construction, without the provision of an EIN. We now understand, however, that Federally recognized Tribal governments, as well as Tribally owned and operated economic development entities, including myriad types of businesses involving services, products and tourism, such as gaming, are required by the IRS to secure an EIN if they conduct business operations which have employees or report gaming withholdings.[38] Moreover, an internal review of the Commission's records suggests that approximately a mere 5% of the FRNs held by Tribal governments or enterprises have been assigned by the Commission without the submission of an EIN. We therefore seek comment on whether to eliminate this exception, and require Tribal governments and enterprises to submit an EIN in order to retain their FRNs. We seek comment on how the Commission should handle the assignment of FRNs in the rare case where a Tribal government or enterprise does not have an EIN. We tentatively conclude that Tribal governments and enterprises that have not previously provided an EIN should be permitted to retain their FRNs in the TCNS indefinitely to permit the continued use of the TCNS. In such circumstances, these FRNs will be made inactive and will not be able to be used on remittance payments or license applications with the Commission until an EIN has been provided. We seek comment on this tentative conclusion.

D. "Special Use" FRNs

38. "Special use" FRNs are electronically assigned to individuals holding attributable interests in various media licenses from whom social security numbers could not be obtained, and are used exclusively by media services licensees to report ownership interests on FCC Form 323. More specifically, if, after using diligent and good-faith efforts, a media service licensee is unable to obtain, and/or does not have permission to use, a social security number in order to generate an FRN for any specific individual whose FRN must be reported on Form 323, such licensee may obtain a "special use" FRN through a mechanism contained in the electronic Form 323.[39] Licensees that use "special use" FRNs are deemed to be fully compliant with the Form 323 filing obligation. These "special use" FRNs are generated through the Media Bureau's Consolidated Database System (CDBS), not CORES, and, significantly, can be used for no other purpose at the Commission other than for licensees to fulfill their Form 323 media ownership reporting requirements.[40] Thus, the issuance of these "special use" FRNs does not compromise the Commission's obligations under the DCIA.

39. We seek comment on whether it would be appropriate to generate and assign "special use" FRNs in other contexts at the Commission, such as to fulfill other ownership reporting requirements. For example, wireless licensees are required to report those entities and individuals that hold a 10% or greater interest on FCC Form 602 when seeking new licenses, transfers of control/assignments, and renewals, or while applying to participate in an auction conducted through competitive bidding.[41] Similarly, companies seeking to obtain or transfer control of domestic or international section 214 authorizations are required to report 10% or greater ownership interests. Would "special use" FRNs be helpful for such licensees/authorization holders that have difficulty obtaining investor information to make FCC filings? Again, we emphasize that these "special use" FRNs would not be eligible to be utilized for any other purpose at the Commission other than to fulfill ownership reporting requirements. In what other situations should we consider making available the use of "special use" FRNs?

E. Registrant E-mail Addresses

40. Currently, entities and individuals are given the opportunity to voluntarily provide an e-mail address when completing the CORES registration process to obtain an FRN. Given the significant increase in the use of and dependence on e-mail in the years since CORES first became operational, however, we tentatively conclude that all FRN holders should be required to provide an e-mail address upon registration. In this day and age, e-mail communication is an efficient tool for maintaining contact with our regulatees. For example, the provision of a valid e-mail address would enhance the Commission's ability to contact registrants in the event that a remittance issue arises, or if there is a need to disseminate an important notice. In addition, the Commission is committed to reducing the environmental impact of its activities, and intends to increase its use of e-mail and other electronic means to communicate with regulated entities and interested parties in the future. Therefore, we propose to require entities and individuals who register for an FRN for the first time to provide their e-mail address, which will remain hidden from public view. An e-mail address would also be required for each sub-FRN or sub-account that is subsequently established. We seek comment on this proposal.

41. We also seek comment on how the Commission should treat previously registered FRNs for which FRN holders did not voluntarily furnish an e-mail address. What is the least disruptive or most efficient way for the Commission to obtain these e-mail addresses? Should current FRN holders be required to provide their e-mail addresses the next time they attempt to use their FRN on an electronic Commission filing? We also seek comment on whether entities and individuals should be required to provide the e-mail addresses of their points of contact. Moreover, we tentatively conclude that entities and individuals should be required to navigate an e-mail validation process at the time of registration by clicking on a link that CORES will automatically send to the e-mail address that was provided. Should we require entities and individuals to update their e-mail addresses that are on file in CORES as

[38] *See* IRS Form SS–4 Application for Employer Identification Number. Although Federally recognized Indian Tribes are not subject to income taxes, Tribal governments are still required to obtain an EIN if they conduct business operations which have employees, issue information returns, or report gaming withholdings. *See generally, http://www.irs.gov/govt/tribes/index.html.*

[39] *See* "Form 323 Frequently Asked Questions," at *http://www.fcc.gov/bureaus/mb/industry_analysis/form323faqs.html.*

[40] *See, e.g., Promoting Diversification of Ownership in the Broadcasting Services,* MB Docket Nos. 07–294, 06–121, 02–277, and 04–228, and MM Docket Nos. 01–235, 01–317, and 00–244, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5908, para. 21 (2009).

[41] *See* 47 CFR 1.2112(a).

part of the license renewal process? We seek comment on these questions.

F. Creation of a User ID

42. As is typically the case with most online information systems, CORES requires FRN holders to input a "User ID" in order to access the system. Currently, CORES does not offer FRN holders the option to choose or modify their User ID; instead, for all FRN holders, their assigned ten-digit FRN serves as their User ID. In the interest of implementing customer improvements, we tentatively conclude that FRN holders should be provided with the ability to create, at their discretion, a custom User ID. We seek comment on this conclusion. Should the FRN serve as the initial default User ID until it is modified by the FRN holder?

43. In addition, we are aware of business practices in which third-party representatives (*e.g.,* outside legal counsel) for several clients either establish an FRN for each of their clients or regularly require access to each client's FRN. In either event, these third-party CORES users are currently required to log out of the CORES system before being able to log-in to the next FRN in question. We seek comment on whether we should permit third-party CORES users to associate a custom User ID with multiple FRNs that belong to multiple clients, thereby permitting access to various FRNs with just a single log-in to the CORES system. We ask commenters to identify any risks that might be associated with permitting third parties to access multiple FRNs with a single log-in. For example, would this feature hinder the ability of law firms to validate or audit charges later billed to clients for work conducted on their behalf?

G. Log-In Information

44. As currently designed, the CORES log-in information that is created by an FRN holder consists of two elements: A single password and, as a password recovery tool, a Personal Security Question/Answer. One drawback to this system is that, if an FRN holder authorizes multiple individuals to utilize the FRN, the log-in information must be shared among these different individuals. This, in turn, creates a security risk for the FRN holder every time the entity undergoes a personnel change.

45. To remedy this, we propose to provide entities with the option to create a unique User ID for each individual that will be permitted to use the FRN (or a particular sub-FRN, as the case may be). Each User ID would have a unique password and associated Personal Security Question. Entities would have the ability to delete any particular User IDs that have been created, or have them reset with the help of the CORES help desk. We seek comment on this tentative conclusion. Should each registered entity be permitted to designate an "administrator" or "primary user account," with the ability to modify or delete the accounts of individual users? Alternatively, should each user have the ability to create a new User ID or modify an existing one? If so, should we notify a designated sub-FRN or sub-account when a new user has been added? In addition, we seek comment on whether individuals should have the ability to create additional User IDs to access their FRN as well. Why or why not?

H. Using CORES To Alert FRN Holders About Financial or Other Administrative Issues

46. In its current form, CORES lacks the capability to alert FRN holders about known financial or other administrative-related issues regarding their standing at the Commission, such as their status in the Commission's Red Light Display System, their debarment status,[42] or the fact that we have discovered that their contact information is incorrect or nonoperational. We believe adding such features to CORES will benefit the Commission and regulatees alike, and tentatively conclude that the Commission should have the ability to communicate such issues to regulatees through CORES. One option for accomplishing this is to post warning messages on CORES that would appear the next time a regulatee accesses its FRN through the system. Another use for this feature might be to display payment histories and unpaid bills for Commission-related activities, such as unpaid fines and forfeitures, as well as the section 9 regulatory fee payment status. Alternatively, or in addition to the above, CORES could send an alert notification electronically to the e-mail address provided by the FRN holder. We seek comment on these proposals. Should displays, prompts and notifications of this nature come to an FRN holder's attention immediately upon logging in to any Commission system, or just upon logging in to CORES? Should certain information just be available to the registrant of the single FRN, to certain pre-designated FRN sub-account registrants, or to all of an FRN's registrants? Taking into account any privacy or security concerns, which information should be available to all of an FRN's registrants or to just specific users? We seek comment on how entities and individuals would best like to see this information displayed and managed.

I. Tax Exempt Indicator

47. We propose to add a data field to FRNs that would enable entities and individuals to indicate any tax exempt status that they possess through CORES. Under our proposal, entities and individuals claiming to be tax exempt would be required to provide substantiating documentation to the Commission through CORES for review within thirty (30) days of registration; otherwise, the tax exempt indicator would be removed from the FRN record.[43] Because tax-exempt entities generally also qualify for a reduction or elimination of their section 8 or section 9 annual regulatory fee requirements, the availability of such data and documentation through CORES would simplify the process for confirming eligibility for a reduction of (or exemption from) annual fee requirements, thus improving our financial operations. We seek comment on this proposal. Once scanned or uploaded, the documentation would be publicly accessible through CORES via a hyperlink or similar icon. In the event that the tax exempt status is not accepted by the Commission, most likely due to a lack of proper documentation, we tentatively conclude that the entity or individual would be notified of this determination through its FRN in CORES, and its tax exempt indicator would be changed as deemed appropriate. We seek comment on this proposal, as well as on any appeal process that should be implemented.

J. Bankruptcy Indicator

48. In certain contexts, our various Bureaus and Offices have an interest in knowing when industry participants are filing for (or emerging from) bankruptcy. For example, the Commission is required to process assignments or transfers of control of licenses for

[42] The Commission's rules at 47 CFR 1.2001, *et seq.,* require that each applicant requesting professional or commercial licenses certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that include Commission benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

[43] The most commonly accepted documentation is an IRS determination letter. An entity's IRS determination letter proves that it has been recognized by the IRS as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code. Acceptable documentation may also include State or government certifications or other documentation that nonprofit status has been approved by a State or other governmental authority.

parties that enter bankruptcy.[44] Also, the Commission's Office of Financial Operations routinely receives requests for waiver of Section 9 regulatory fees from debtors claiming to be in bankruptcy. Furthermore, the Commission sometimes assumes the role of debt collector as one of a bankrupt regulatee's many creditors.[45] Currently, the Commission does not have a central depository of notifications that an entity is in bankruptcy.

49. To reduce administrative burdens at the Commission and enable our Bureaus and Offices to better coordinate their efforts to fulfill our regulatory obligations to our regulatees that have filed for bankruptcy, we propose to add a data field that would enable entities and individual license holders (or their representatives) to notify the Commission through CORES that they have entered into bankruptcy, or that there has been a change in their bankruptcy status (such as, for example, when they emerge from bankruptcy under Chapter 11 of the U.S. Bankruptcy Code).[46] If this proposal is adopted, such entities and individuals would be required to provide their bankruptcy court filing to the Commission in conjunction with an FCC filing involving their bankruptcy, such as for an involuntary transfer of control to the debtor-in-possession or a request for waiver of certain regulatory fees, by electronically scanning it and uploading it to CORES through their FRN account. We seek comment on our bankruptcy notification proposals. Would it be unduly burdensome or duplicative to require regulatees that have filed for bankruptcy to electronically submit their bankruptcy court filings to the Commission through CORES? We also seek comment on whether bankruptcy filings that are electronically scanned to the entity's/individual's FRN account should be made viewable to the public in CORES or whether they only should be viewable to Commission staff. We emphasize that the proposed bankruptcy notification fields would not be intended to take the place of any of the Commission's existing filing requirements for bankruptcy cases, and that we will continue to uphold our filing requirements for entities and individual license holders seeking financial relief. Thus, entities and individuals who have notified the Commission through CORES that they have entered into bankruptcy will continue to be required to formally file for any transfers of control or assignment of licenses, as well as for any waivers, reductions and deferrals of regulatory fees they seek.

K. Incorporating Data Contained in the Commission's Form 499 Database

50. Section 254(d) of the Communications Act of 1934, as amended (the "Act") directs every telecommunications carrier that provides interstate telecommunications service to contribute to the mechanisms established by the Commission to preserve and advance universal service.[47] As a result, all entities that provide interstate telecommunications services to the public for a fee must contribute to the universal service fund.[48] The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund.[49] Certain providers, such as *de minimis* providers, however, do not contribute directly to the universal service fund.[50] The amount that entities are required to contribute to the fund is based on certain revenues reported on FCC Form 499, also known as the Telecommunications Reporting Worksheets.[51] Specifically, contributors report historical revenue annually using FCC Form 499–A;[52] projected future quarterly revenue is reported quarterly using the related FCC Form 499–Q.[53]

51. In addition to revenue information, Forms 499–A and 499–Q are used by telecommunications carriers to report basic identifying information, such as the address of the entity's corporate headquarters; the name and address of the entity's Chief Executive Officer, the name and address of the entity's agent for service of process; and the jurisdictions in which the entity provides telecommunications services. This data is then compiled and made publicly available through a searchable electronic database that is available on the FCC's Web site.[54] Individual records may be accessed either by a particular entity's 499 Filer ID Number or, conveniently, its FRN.

52. Thus, in accordance with the Paperwork Reduction Act's requirement that we "improve the integrity, quality, and utility of information to all users within and outside the agency,"[55] we seek comment on how best to connect and incorporate data reported by registrants on FCC Form 499 (and other data systems) into CORES. As explained above, information filed as a part of FCC Form 499 is already publicly available (and searchable) through an FCC database. Incorporating this data into CORES will improve the ability of both filing entities and agency staff to review the data for errors and omissions, and speed the identification of those entities that have reported an erroneous FRN on their Form 499 filings. We seek comment on whether there are emerging industry conventions or data formats for combining data to which we should adhere or from which we should take guidance. Also, do our various proposals to limit entities to a single FRN create difficulties for affiliated entities when filing FCC Form 499?

[44] *See, e.g.,* 47 CFR 1.948(g), 5.59(d), 25.119(c), 63.03(d)(2), 63.24(g), 73.3541.

[45] Debt collected by the Commission includes, in part, auction debt, fines and forfeitures for rule violations, and regulatory fee obligations.

[46] We clarify that this requirement would apply solely to entities and individuals that hold FCC licenses or certifications, or otherwise are considered to be doing business with the agency. Regulated entities' individual investors who have themselves filed for bankruptcy protection would not be required to report their status to the agency under this proposal.

[47] 47 U.S.C. 254(d).

[48] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776, 8797, para. 787 (1997) (subsequent history omitted).

[49] *See, e.g., Universal Service Contribution Methodology,* WC Docket Nos. 06–122 and 04–36, CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, and 98–170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol (VoIP) providers to contribute to the universal service fund because they are providers of interstate telecommunications).

[50] *See, e.g., Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge,* CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72, Fourth Order on Reconsideration, 13 FCC Rcd 5381, 5481, para. 298.

[51] The forms are filed with the Universal Service Administrative Company ("USAC"), which is the entity responsible for administering and managing the fund. *See* 47 CFR 54.711(a).

[52] Form 499–A is generally filed on April 1 of each year. *See* Universal Service Administrative Company, Schedule of Filings, at *http://www.universalservice.org/fund-administration/contributors/revenue-reporting/schedule-filings.aspx* (USAC Form 499 Filing Schedule).

[53] *Id.*

[54] *See http://fjallfoss.fcc.gov/cgb/form499/499a.cfm.*

[55] The Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). Specifically, the PRA requires:

(b) With respect to general information resources management, each agency shall—

(1) Manage information resources to—

(A) Reduce information collection burdens on the public;

(B) Increase program efficiency and effectiveness; and

(C) Improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security [* * *]

44 U.S.C. 3506.

L. Company Dashboard

53. In light of the Commission's intent to develop and deploy an agency-wide Consolidated Licensing System,[56] we also seek comments on the usefulness of utilizing a company dashboard or summary profile that filers would see upon login, which would serve as a central repository of information for the filer. As described above, through the dashboard, the filer would have the ability to quickly and easily review various pertinent information, such as the progress on their filings, fees that are due, the history of files the filer has submitted, as well as any other important information the filer may need. Other uses for such a dashboard may include: Identifying any information that is missing from a pending application, updating their profile, and detecting actions requiring immediate attention. How should such a dashboard be designed so that it is simple for users to navigate? Should users be able to contact the Commission in an online chat if they have questions? Should there be a "guided wizard" to help users fill-out an application(s)/form(s)? What other information would be useful if readily available to users through such a dashboard? We seek comment on this proposal.

M. Petition for Rulemaking

54. We wish to take this opportunity to address a Petition for Rulemaking that was filed with the Commission by Frederick Maia ("Maia") concerning certain records contained in the CORES system and the Commission's Universal Licensing System ("ULS").[57] Maia notes that, with the exception of an applicant's TIN, the personal licensee information contained in these two systems is exactly the same.[58] Maia therefore proposes that the CORES system be automatically updated whenever an amateur radio operator applicant updates his or her name and address in ULS.[59] Maia further notes that Commission rules do not require an amateur radio operator applicant to provide telephone numbers, fax numbers or e-mail addresses in CORES or ULS, and suggests that the Commission may wish to make submission of this additional information mandatory in the part 1 and part 97 rules.[60]

55. The petitioner proposes this change to CORES based on his experience in amateur radio service. Maia notes that while § 97.23 of the Commission's rules requires that license grants "must show the grantee's correct name and mailing address," there is nothing in the part 97 rules that obligates a licensee to also keep their CORES name and address record updated.[61] The Maia Petition goes on to state that many amateur radio operators who have submitted a name or address update in ULS believe that they have fulfilled their obligation to keep their personal information accurate at the Commission.[62] Maia maintains that few amateur radio operators know that they are also required to update their CORES listing.[63]

56. We seek comment on this proposal. As noted above, the Commission has begun a proceeding related to the development of a new Consolidated Licensing System, which would eventually replace ULS. Should modifications or updates to personal information in ULS/CLS be automatically imported into CORES, or vice versa? Should such information be uploaded from ULS/CLS into CORES (or, alternatively, from CORES to ULS/CLS) voluntarily, that is, only at the user's option? Should this feature apply to all duplicative personal information, or should we require that users change some information in each system manually? Why or why not? We seek comment on what other Commission services would benefit from this auto-update feature.

N. Other Considerations

57. Foreign nationals and non-United States citizens who are not employed in the United States currently are not required to provide a domestic mailing address as part of the process for obtaining an FRN through CORES. It has often proven difficult for the Commission to contact or otherwise collect delinquent debt from these foreign individuals through their foreign addresses. Therefore, we tentatively conclude that foreign nationals and non-United States citizens who are not employed in the United States should be required to designate and identify an address for a domestic agent authorized to accept notice from the Commission either as a prerequisite to or as part of the process of obtaining an FRN. We seek comment on this proposal.

58. Finally, we seek comment on any other issues relating to the customer interface with CORES that the Commission should consider in this rulemaking proceeding. Are there particular issues relating to performance or access to the system that the Commission should endeavor to improve through this proceeding? Are there any other issues or improvements that we could make to the CORES system that have not been raised above? We particularly invite commenters to discuss challenges they have had with accessing, using, or exchanging information with CORES or with their FRNs in the past, and invite comment on how such difficulties could be ameliorated in the future.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities of the proposals suggested in this *Notice of Proposed Rulemaking.* The IRFA is set forth in Appendix A. Written public comments on the IRFA must be filed in accordance with the comment filing deadlines indicated on the first page of this document, and using the procedures and format described in Appendix A and section IV.D., below.

B. Paperwork Reduction Act of 1995 Analysis

60. *Initial Paperwork Reduction Act Analysis.* This *Notice of Proposed Rulemaking* contains proposed new and modified information collection requirements.[64] The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how me might further reduce the information collection burden for small business concerns with fewer than 25 employees.

61. In addition to filing comments with the Secretary, a copy of any PRA

[56] *See* para. 10, *supra.*

[57] *See* Petition for Rulemaking, WTB 07–36, filed July 11, 2007 ("Maia Petition"). The Universal Licensing System ("ULS") is a Commission electronic filing system that enables the public to research applications, licenses, and antenna structures, among other things, regarding wireless services. *See http://wireless.fcc.gov/uls/index.htm.*

[58] Maia Petition at 2.

[59] *Id.*

[60] *Id.* at 2–3.

[61] *Id.* at 5. *See* 47 CFR 97.23.

[62] Maia Petition at 5.

[63] *Id.* at 2 and 5 (*citing* 47 CFR 1.8002).

[64] The Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or via fax at 202–395–5167.

62. *Further Information.* For additional information concerning the proposed information collection requirements contained in this *Notice of Proposed Rulemaking,* send an e-mail to *PRA@fcc.gov* or contact Warren Firschein, Federal Communications Commission, Room 3–C768, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Warren.Firschein@fcc.gov.* To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

C. Ex Parte Rules

63. *Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules.[65] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented is generally required.[66] Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

D. Filing Requirements

64. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

65. Parties should send a copy of their filings to Warren Firschein, Federal Communications Commission, Room 3–C768, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Warren.Firschein@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

66. Documents in Docket No. 10–234 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail fcc@*bcpiweb.com.*

E. Accessible Formats

67. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

F. Additional Information

68. For additional information on this proceeding, contact Warren Firschein at (202) 418–0844, or via e-mail at *Warren.Firschein@fcc.gov.* Press inquiries should be directed to David Fiske at (202) 418–0513.

V. Ordering Clauses

69. Accordingly, *it is ordered* that, pursuant to Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 158(c)(2), 159(c)(2), and 303(r); 5 U.S.C. 5514; and section 7701 of the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701(c)(1), *notice is hereby given* of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking.*

70. *It is further ordered* that the Secretary shall cause a copy of this *Notice of Proposed Rulemaking* to be published in the **Federal Register**.

71. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

[65] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

[66] *See* 47 CFR 1.1206(b)(2).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Appendix A

Initial Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act (RFA),[67] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible economic impact on small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking ("Notice").*[68] Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice.* The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[69] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register.**[70]

A. Need for and Objectives of the Proposed Rules

73. The *Notice* tentatively concludes that the Commission should modify its electronic registration system, known as "CORES," to make improvements to the process by which entities and individuals access and make use of information that is contained in CORES and to make it easier for individuals and entities to do business with the FCC. Specifically, the *Notice* proposes to limit entities and individuals to the use of a primary FRN, while allowing subsidiary or associated FRNs; allow entities to identify multiple points of contact; eliminate some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") at the time of registration; require FRN holders to provide their e-mail addresses; give FRN holders the option to create a custom User ID; modify CORES log-in procedures for entities so as to ease use by multiple individuals; add attention flags and notices that would inform FRN holders of their financial standing before the Commission when logging onto CORES; and add data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. These modifications, if implemented, would eliminate some of the system's current limitations and improve the customer interface with CORES so that customers can use the system in a more efficient and effective manner, especially in light of the Commission's intent to develop an agency-wide consolidated licensing system. The proposed changes would also improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the Federal government.

B. Legal Basis

74. The proposed action is authorized under sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 158(c)(2), 159(c)(2), and 303(r); 5 U.S.C. 5514; and section 7701 of the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701(c)(1).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

75. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[71] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[72] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[73] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.[74]

76. Any proposed changes or additions to the Commission's part 1 rules that may be made as a result of the *Notice* would be of general applicability to all services, applying to all entities of any size that apply for or hold Commission licenses, permits, certifications, *etc.,* as well as entities or individuals that have attributable ownership interests in such entities, and have already obtained a unique identifying number through CORES called an FCC Registration Number, or "FRN." We also note that these changes may also affect small entities, such as law firms and accounting firms, that prepare filings or otherwise access CORES on the behalf of regulatees. The Commission does not keep statistics on the number of such small entities, but we conclude that any burden on such entities is unlikely to be significant.

77. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[75]

78. *Small Organizations.* Nationwide, as of 2002, there were approximately 1.6 million small organizations.[76] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[77]

79. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[78] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[79] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[80] Thus, we estimate that most governmental jurisdictions are small.

80. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[81] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[82] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

81. *Incumbent Local Exchange Carriers ("ILECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small

[67] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAA"). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[68] We also note that we could certify this action under 5 U.S.C. 605, given that a substantial number of entities and individuals doing business with the Commission have already received their FRN by virtue of their prior registration in CORES, and the changes proposed here will have no significant economic impact on them. Moreover, we have proposed to make it extremely simple, and virtually cost-free, for anyone else to obtain or revise their already-existing FRN(s). Finally, the few entities that, as a result of our action, would be required to scan and file documentation demonstrating their tax-exempt or bankruptcy status will experience only a minor compliance burden.

[69] 5 U.S.C. 603(a).

[70] *Id.*

[71] 5 U.S.C. 603(b)(3).

[72] 5 U.S.C. 601(6).

[73] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[74] Small Business Act, 15 U.S.C. 632 (1996).

[75] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (accessed Jan. 2009).

[76] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[77] 5 U.S.C. 601(4).

[78] 5 U.S.C. 601(5).

[79] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[80] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[81] 15 U.S.C. 632.

[82] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) ("Small Business Act"); 5 U.S.C. 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

if it has 1,500 or fewers employees.[83] According to Commission data,[84] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

82. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"),* "*Shared-Tenant Service Providers,*" *and* "*Other Local Service Providers.*" Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[85] According to Commission data,[86] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

83. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[87] According to Commission data,[88] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

84. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] According to Commission data,[90] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

85. *Payphone Service Providers ("PSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[91] According to Commission data,[92] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities.

86. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[93] According to Commission data,[94] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

87. *Operator Service Providers ("OSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[95] According to Commission data,[96] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

88. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[97] According to Commission data,[98] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

89. *800 and 800-Like Service Subscribers.*[99] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[100] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[101] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

90. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[102] The second has a size standard of $25 million or less in annual receipts.[103] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[104]

91. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[105] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[106] Of this total, 307 firms had

[83] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[84] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5–5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

[85] 13 CFR 121.201, NAICS code 517110.

[86] "Trends in Telephone Service" at Table 5.3.

[87] 13 CFR 121.201, NAICS code 517310.

[88] "Trends in Telephone Service" at Table 5.3.

[89] 13 CFR 121.201, NAICS code 517310.

[90] "Trends in Telephone Service" at Table 5.3.

[91] 3 CFR 121.201, NAICS code 517110.

[92] "Trends in Telephone Service" at Table 5.3.

[93] 13 CFR 121.201, NAICS code 517110.

[94] "Trends in Telephone Service" at Table 5.3.

[95] 13 CFR 121.201, NAICS code 517110.

[96] "Trends in Telephone Service" at Table 5.3.

[97] 13 CFR 121.201, NAICS code 517310.

[98] "Trends in Telephone Service" at Table 5.3.

[99] We include all toll-free number subscribers in this category.

[100] 13 CFR 121.201, NAICS code 517310.

[101] "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

[102] 13 CFR 121.201, NAICS code 517410.

[103] 13 CFR 121.201, NAICS code 517919.

[104] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[105] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[106] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and

annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[107] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities.

92. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." [108] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[109] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[110] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities.

93. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[111] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." [112] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[113] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[114] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[115] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[116] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[117] Thus, we estimate that the majority of wireless firms are small.

94. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications." [118] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[119] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." [120] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[121] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[122] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[123] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[124] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[125] Thus, we estimate that the majority of wireless firms are small.

95. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[126] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[127] The SBA has approved this definition.[128] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[129] Fifty-seven companies claiming small business status won 440 licenses.[130] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[131] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[132]

96. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging

Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[107] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[108] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[109] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[110] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[111] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[112] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[113] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[114] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[115] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[116] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[117] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[118] 13 CFR 121.201, NAICS code 517212.

[119] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[120] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[121] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[122] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[123] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[124] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[125] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[126] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[127] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[128] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[129] *See* "*929 and 931 MHz Paging Auction Closes,*" Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[130] *See id.*

[131] *See* "*Lower and Upper Paging Band Auction Closes,*" Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[132] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

and messaging" services.[133] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[134] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

97. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[135] The SBA has approved these definitions.[136] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

98. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

99. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[137] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[138] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[139] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[140] We therefore estimate that 222 of these are small under the SBA small business size standard.

100. *Broadband Personal Communications Service.* The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[141] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[142] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[143] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[144] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[145]

101. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[146] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[147] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[148] Of the 14 winning bidders, six were designated entities.[149] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[150]

102. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[151] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[152] Four winning bidders that identified themselves as very small businesses won 17 licenses.[153] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

103. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[154] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[155] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[156] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[157] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[158] The SBA has

[133] "Trends in Telephone Service" at Table 5.3.

[134] "Trends in Telephone Service" at Table 5.3.

[135] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[136] *See Alvarez Letter 1998.*

[137] 13 CFR 121.201, NAICS code 517210.

[138] *Id.*

[139] "Trends in Telephone Service" at Table 5.3.

[140] "Trends in Telephone Service" at Table 5.3.

[141] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) ("*PCS Report and Order*"); *see also* 47 CFR 24.720(b).

[142] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[143] *See Alvarez Letter 1998.*

[144] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[145] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[146] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 2339 (2001).

[147] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice,* 20 FCC Rcd 3703 (2005).

[148] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice,* 22 FCC Rcd 9247 (2007).

[149] *Id.*

[150] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice,* 23 FCC Rcd 7496 (2008) ("AWS–1 and Broadband PCS Procedures Public Notice").

[151] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[152] *Id.* at 23 FCC Rcd at 7521–22.

[153] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *Public Notice,* 23 FCC Rcd 12749–65 (2008).

[154] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[155] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[156] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) ("*Narrowband PCS Second Report and Order*").

[157] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[158] *Id.*

approved these small business size standards.[159] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[160] Three of these claimed status as a small or very small entity and won 311 licenses.

104. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[161] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[162] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[163] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[164] The SBA approved these small size standards.[165] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[166] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[167] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[168] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

105. In 2007, the Commission adopted the *700 MHz Second Report and Order.*[169] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.[170] A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[171] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[172]

106. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[173] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[174] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[175] SBA approval of these definitions is not required.[176] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[177] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[178] Subsequently, in the *700 MHz Second Report and Order,* the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).[179] A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.[180] Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

107. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[181] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[182] The SBA has

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[159] *See Alvarez Letter 1998.*

[160] *See* "Narrowband PCS Auction Closes," *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[161] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52–59 Report and Order*").

[162] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[163] *See id.*

[164] *See id,* 17 FCC Rcd at 1088, para. 173.

[165] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

[166] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[167] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[168] *See id.*

[169] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) ("700 MHz Second Report and Order"), 22 FCC Rcd 15289 (2007).

[170] Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice,* 23 FCC Rcd 4572 (2008).

[171] *Id.* 23 FCC Rcd at 4572–73.

[172] *Id.*

[173] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746–764 MHz Band Second Report and Order*").

[174] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[175] *See id.*

[176] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[177] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 18026 (2000).

[178] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[179] *See* In the Matter of Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket 06–150, *Second Report and Order,* 22 FCC Rcd 15289, 15339–15344 ¶¶ 118–134 (2007) (*700 MHz Second Report and Order).*

[180] *Id.*

[181] 47 CFR 90.814(b)(1).

[182] 47 CFR 90.814(b)(1).

approved these small business size standards for the 900 MHz Service.[183] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[184] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[185]

108. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[186] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[187] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

109. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[188] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

110. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[189] This category provides that a small business is a wireless company employing no more than 1,500 persons.[190] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

111. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[191] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[192] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[193] The SBA has approved these small size standards.[194] Auctions of Phase II licenses commenced on and closed in 1998.[195] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[196] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[197] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[198] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.[199] Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years ("small business") received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid ("very small business"). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.[200] In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

112. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[201] Bidding credits for designated entities were not available in Auction 77.[202] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[203]

113. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[204] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information

[183] *See Alvarez Letter 1999.*

[184] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[185] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[186] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 17162 (2000).

[187] *See,* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 1736 (2000).

[188] *See generally* 13 CFR 121.201, NAICS code 517210.

[189] *Id.*

[190] *Id.*

[191] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[192] *Id.* at 11068, para. 291.

[193] *Id.*

[194] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

[195] *See generally* "220 MHz Service Auction Closes," *Public Notice,* 14 FCC Rcd 605 (1998).

[196] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice,* 14 FCC Rcd 1085 (1999).

[197] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice,* 14 FCC Rcd 11218 (1999).

[198] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (2002).

[199] *See* "Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[200] *See* "Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *Public Notice,* 22 FCC Rcd 11573 (2007).

[201] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice,* 23 FCC Rcd 6670 (2008).

[202] *Id.* at 6685.

[203] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice,* 23 FCC Rcd 9501 (2008).

[204] *See* 13 CFR 121.201, NAICS code 517210.

that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[205]

114. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

115. *Fixed Microwave Services.* Fixed microwave services include common carrier,[206] private operational-fixed,[207] and broadcast auxiliary radio services.[208] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[209] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

116. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[210] An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[211] The SBA has approved these small business size standards.[212] The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

117. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[213] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[214] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[215] The SBA has approved these small business size standards in the context of LMDS auctions.[216] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

118. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[217] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[218] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[219] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[220] The SBA has approved of these definitions.[221] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses might be awarded to small businesses.

119. *Location and Monitoring Service ("LMS").* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[222] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[223] These definitions have been approved by the SBA.[224] An auction for LMS licenses commenced and closed in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

120. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural

[205] *See generally* 13 CFR 121.201.

[206] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[207] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[208] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[209] 13 CFR 121.201, NAICS code 517210.

[210] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[211] *Id.*

[212] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[213] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) ("*LMDS Second Report and Order*").

[214] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[215] *See id.*

[216] *See Alvarez to Phythyon Letter 1998.*

[217] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" Public Notice, 9 FCC Rcd 6227 (1994).

[218] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[219] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[220] *Id.*

[221] *See Alvarez to Phythyon Letter 1998.*

[222] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) ("*Automatic Vehicle Monitoring Systems Second Report and Order*"); *see also* 47 CFR 90.1103.

[223] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[224] *See Alvarez Letter 1998.*

Radiotelephone Service.[225] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[226] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[227] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

121. *Air-Ground Radiotelephone Service.*[228] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[229] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[230] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[231] These definitions were approved by the SBA.[232] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

122. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[233] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[234] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[235] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[236] Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61.[237] Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[238] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

123. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico.[239] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[240] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[241]

124. *Multiple Address Systems ("MAS").* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[242] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[243] The SBA has approved of these definitions.[244] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.[245] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

125. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For such private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance is that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[246] The

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[225] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[226] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[227] 13 CFR 121.201, NAICS code 517210.

[228] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[229] 13 CFR 121.201, NAICS codes 517210.

[230] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[231] *Id.*

[232] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[233] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[234] 13 CFR 121.201, NAICS code 517210.

[235] A licensee may have a license in more than one category.

[236] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[237] *See* "*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*" Public Notice, 19 FCC Rcd 9518 (WTB 2004); "*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*" Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[238] 47 CFR 80.1252.

[239] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[240] 13 CFR 121.201, NAICS code 517210.

[241] *Id.*

[242] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[243] *Id.*

[244] *See Alvarez Letter 1999.*

[245] *See* "*Multiple Address Systems Spectrum Auction Closes,*" Public Notice, 16 FCC Rcd 21011 (2001).

[246] *See* 13 CFR 121.201, NAICS code 517210.

Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

126. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses [247] in 2007.[248] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[249] Neither of the two winning bidders sought designated entity status.[250]

127. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[251] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [252] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

128. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[253] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[254] The SBA has approved these definitions.[255] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

129. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[256] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[257] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[258] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[259] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[260] Auction 86 concluded in 2009 with the sale of 61 licenses.[261] Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

130. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[262] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [263] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[264] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[265] Of this total,

[247] *See* "*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*" Public Notice, 21 FCC Rcd 12393 (WTB 2006).

[248] *See* "*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*" Public Notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[249] *Auction No. 69 Closing PN,* Attachment C.

[250] *See Auction No. 69 Closing PN.*

[251] 13 CFR 121.201, NAICS code 517210.

[252] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[253] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 CFR 101.538(a)(2).

[254] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[255] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[256] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) ("*MDS Auction R&O*").

[257] 47 CFR 21.961(b)(1).

[258] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[259] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice,* 24 FCC Rcd 8277 (2009).

[260] *Id.* at 8296.

[261] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice,* 24 FCC Rcd 13572 (2009).

[262] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[263] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[264] 13 CFR 121.201, NAICS code 517110.

[265] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[266] Thus, the majority of these firms can be considered small.

131. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[267] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[268] The Commission has estimated the number of licensed commercial television stations to be 1,395.[269] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[270] We therefore estimate that the majority of commercial television broadcasters are small entities.

132. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [271] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

133. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[272] These stations are non-profit, and therefore considered to be small entities.[273]

134. In addition, there are also 2,386 low power television stations (LPTV).[274] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

135. *Radio Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[275] The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts.[276] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

136. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[277] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[278] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

137. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[279]

138. The Commission estimates that there are approximately 5,618 FM translators and boosters.[280] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[281]

139. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[282] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[283] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[284] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[285] Thus, the majority of these firms can be considered small.

140. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[286] Industry data indicate that, of 1,076 cable operators nationwide, all but

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[266] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[267] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[268] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[269] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[270] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[271] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 21.103(a)(1).

[272] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[273] *See generally* 5 U.S.C. 601(4), (6).

[274] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[275] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[276] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[277] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[278] 13 CFR 121.102(b) (an SBA regulation).

[279] 13 CFR 121.201, NAICS codes 515112 and 515120.

[280] *See supra* note 242.

[281] *See* 15 U.S.C. 632.

[282] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[283] 13 CFR 121.201, NAICS code 517110.

[284] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[285] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[286] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

eleven are small under this size standard.[287] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[288] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[289] Thus, under this second size standard, most cable systems are small.

141. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [290] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[291] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[292] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[293] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

142. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[294] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[295] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." [296] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[297] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[298] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[299] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[300] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[301] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

143. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [302] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[303] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[304] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[305] Thus, the majority of these firms can be considered small.

144. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[306] These definitions were approved by the SBA.[307] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[308] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of

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[287] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[288] 47 CFR 76.901(c).

[289] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[290] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[291] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[292] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[293] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[294] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[295] *See* 47 U.S.C. 573.

[296] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[297] 13 CFR 121.201, NAICS code 517110.

[298] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[299] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[300] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[301] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[302] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[303] 13 CFR 121.201, NAICS code 517110.

[304] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[305] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[306] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules To Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. To Provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[307] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 13, 2002).

[308] *See* "*Multichannel Video Distribution and Data Service Auction Closes,*" Public Notice, 19 FCC Rcd 1834 (2004).

the licenses, claimed small business status.[309]

145. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

146. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[310] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[311] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

147. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules.[312] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[313] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[314] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

148. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[315] There are a total of approximately 127,540 licensees in these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of fewer than 50,000 fall within the definition of a small entity.[316]

149. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[317] which has an SBA small business size standard of 1,500 or fewer employees.[318] The latter are within the category of All Other Telecommunications,[319] which has a size standard of annual receipts of $25 million or less.[320] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[321] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[322] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[323] Consequently, we estimate that the majority of ISP firms are small entities.

150. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

151. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities here.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

152. The rules proposed herein would require certain entities or individuals to

[309] *See* "*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,*" Public Notice, 20 FCC Rcd 19807 (2005).

[310] 13 CFR 121.201, NAICS code 517210.

[311] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[312] 47 CFR Part 90.

[313] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[314] 13 CFR 121.201, NAICS Code 517210.

[315] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve State, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are State, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from State departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 State and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[316] 5 U.S.C. 601(5).

[317] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[318] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[319] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[320] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[321] U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[322] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[323] An additional 45 firms had receipts of $25 million or more.

replace and/or consolidate their existing FRNs. Some additional entities and individuals would be required to report their Taxpayer Identification Number. In addition, potential CORES registrants would be required to provide a valid e-mail address as a prerequisite to completing the registration process. Also, entities claiming tax-exempt status or engaged in bankruptcy proceedings would be required to submit documentation demonstrating their tax-exempt or bankruptcy status. A substantial number of entities and individuals doing business with the Commission have already received their FRN by virtue of their prior registration in CORES, and we anticipate that the changes proposed here will have no significant economic impact on them. We have proposed to make it extremely simple, and virtually cost-free, for anyone else to obtain or revise their already-existing FRN(s). The proposals contained in this *Notice* do not include any changes in the language of FCC Forms nor would they require extra filings.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

153. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities." [324]

154. We are attempting to reduce a possible regulatory burden by considering different methods by which we could limit individuals and entities to a single FRN, in order to improve the effectiveness and efficiency of our electronic registration system and to limit the documentation that certain entities would be required to submit to demonstrate their tax exempt or bankruptcy status. We will continue to examine alternatives in the future, with the objective of minimizing any significant impact on small entities. We seek comment on significant alternatives that commenters believe we should adopt.

F. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

155. None.

[FR Doc. 2011–1941 Filed 1–31–11; 8:45 am]

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[324] 5 U.S.C. 603(c)(1)–(c)(4).

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S. 3036/P.L. 111–375
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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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