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WHEN: Tuesday, April 12, 2011
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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 76, No. 57

Thursday, March 24, 2011

Agriculture Department
See Food and Nutrition Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16597
Charter Renewals:
Forestry Research Advisory Council, 16597–16598

Bureau of Ocean Energy Management, Regulation and Enforcement

NOTICES
Environmental Assessments; Availability, etc.:
Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf Region, 16632–16634

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16629–16630

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Required Data Elements for Paternity Establishment Affidavits, 16630
Announcement of an Award, 16630–16631

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Risk Management Requirements for Derivatives Clearing Organizations, 16587–16588
Risk Management Requirements for Derivatives Clearing Organizations; Correction, 16588

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Critical Materials Strategy Request for Information, 16621
Meetings:
Ultra-Deepwater Advisory Committee, 16621

Environmental Protection Agency
RULES
Hazardous Waste Management System:
Identification and Listing; Final Exclusion, 16534–16538
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review, 16593–16595

Executive Office for Immigration Review
RULES
Reorganization of Regulations on Control of Employment of Aliens, 16525–16526

Federal Aviation Administration
RULES
Airworthiness Directives:
Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Series Turbofan Engines, 16526–16530
Establishment of Class E Airspace:
Creighton, NE, 16530–16531
PROPOSED RULES
Airworthiness Directives:
Airbus Model A318, A319, A320, and A321 Series Airplanes, 16582–16587
Boeing Co. Model 737 600, 700, 700C, 800, 900, and –900ER Series Airplanes, 16579–16582
NOTICES
Petitions for Exemption; Summaries of Petitions Received, 16653

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16624–16627

Federal Energy Regulatory Commission
RULES
Demand Response Compensation in Organized Wholesale Energy Markets, 16658–16682
NOTICES
Combined Filings, 16621–16624

Federal Financial Institutions Examination Council
NOTICES
Statutory Provisions Affecting State Appraiser Regulatory Programs, 16627–16628

Federal Highway Administration
NOTICES
Final Federal Agency Actions on Proposed Highway in California, 16653–16654

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 16628

Federal Reserve System
NOTICES
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies Engaged in Permissible Nonbanking Activities, 16628–16629

Fish and Wildlife Service
NOTICES
Application for Enhancement of Survival Permit; Endangered Wildlife, 16634
Environmental Assessments; Availability, etc.:
J.N. "Ding" Darling National Wildlife Refuge, Lee County, FL, 16637–16638
Pine Island, Matlacha Pass, Island Bay and Caloosahatchee NWRs, Lee County, FL, 16636–16637

Seal Beach National Wildlife Refuge, Orange County, CA, 16634–16636
Teleconferences:
Wildlife and Hunting Heritage Conservation Council; Cancellation, 16638

Food and Drug Administration
RULES
Animal Drugs, Feeds, and Related Products;
Withdrawal of Approval of New Animal Drug Applications; Aklomide; Levamisole Hydrochloride; Nitromide and Sulfanitran; Roxarsone; Correction, 16533–16534
Certain Other Dosage Form New Animal Drugs:
Detomidine; Correction, 16533
New Animal Drugs for Use in Animal Feeds:
Florfenicol; Correction, 16534
New Animal Drugs:
Change of Sponsor's Name and Address; Corrections, 16532–16533

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification, 16598–16599
Special Supplemental Nutrition Program for Women, Infants and Children:
Income Eligibility Guidelines, 16599–16603

Forest Service
NOTICES
Meetings:
Butte County Resource Advisory Committee, 16603
Hiawatha West Resource Advisory Committee, 16603
Siskiyou County Resource Advisory Committee, 16604
Southern New Mexico Resource Advisory Committee, 16603

General Services Administration
NOTICES
Federal Travel Regulations:
Relocation Allowances-Relocation Income Tax Allowance Tables, 16629

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Qualification; Fellowship Placement Program, 16631–16632

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procedure for Parties on the Entity List to Request Removal or Modification of their Listing, 16604

Interior Department
See Bureau of Ocean Energy Management, Regulation and Enforcement
See Fish and Wildlife Service
See National Park Service

International Trade Administration
NOTICES
Final Results and Final Rescission in Part, of Antidumping Duty New Shipper Reviews:
Certain Preserved Mushrooms from the People's Republic of China, 16604–16606
Meetings:
Manufacturing Council, 16606–16607
Partial Rescission of Antidumping Duty Administrative Review:
Carbon and Certain Alloy Steel Wire Rod from Mexico, 16607–16608
Rescission of Countervailing Duty Administrative Review:
Honey from Argentina, 16609

International Trade Commission
NOTICES
Consolidated Advisory Opinions and Modification Proceedings:
Certain Ink Cartridges and Components Thereof, 16639
Investigations:
Certain Glassware, 16639–16640

Justice Department
See Executive Office for Immigration Review

Labor Department
See Mine Safety and Health Administration

Mine Safety and Health Administration
NOTICES
Petitions for Modification of Existing Mandatory Safety Standards, 16640–16643

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Committee, 16643–16644

National Credit Union Administration
PROPOSED RULES
Interest Rate Risk, 16570–16579

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Identification of Human Cell Lines Project, 16609–16610

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 16631
National Heart, Lung, and Blood Institute, 16631

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure, 16547–16548
PROPOSED RULES
Endangered and Threatened Species:
Range Extension for Coho Salmon South of San Francisco Bay, 16595
Fisheries of Northeastern United States:
Atlantic Sea Scallop Fishery; Amendment 15 to Management Plan, 16595–16596
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pacific Islands Region Vessel and Gear Identification Requirements, 16610–16611
Perceptions about the Biological and Socio-Economic Performance of Marine Regulations in the U.S. Caribbean, 16612
Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, etc., 16612–16613
Socio-Economic Surveys of Vessel Owners, Permit Holders and Crew in New England and Mid-Atlantic Fisheries, 16611–16612
Applications for Exempted Fishing Permits, 16613–16616
Identification of Nations Fishing in Waters Beyond any National Jurisdiction that Target or Incidentally Catch Sharks, 16616–16617
Meetings:
Mid-Atlantic Fishery Management Council, 16617–16618, 16620
New England Fishery Management Council, 16619–16620
Western Pacific Fishery Management Council, 16618–16619
National Estuarine Research Reserve System, 16620–16621

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 16638

Nuclear Regulatory Commission
PROPOSED RULES
ESBWR Design Certification, 16549–16570
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16644
Applications for Combined Licenses:
Southern Nuclear Operating Co., Burke County, GA, 16645
Environmental Impact Statements; Availability, etc.:
Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant Units 3 And 4, 16645

Postal Service
RULES
Combined Mailings of Standard Mail and Periodicals Flats; Withdrawal, 16534
PROPOSED RULES
Combined Mailings of Standard Mail and Periodicals Flats, 16588–16592

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 16645–16646
Orders of Suspension of Trading:
Circadian, Inc.,Clean Energy Combustion, Inc., et al., 16646
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX BX, Inc., 16650–16652
NASDAQ OMX PHLX LLC, 16646–16650

Social Security Administration
RULES
Neurological Listing Cross-Reference; Technical Correction, 16531–16532

State Department
PROPOSED RULES
Amendment to the International Traffic in Arms Regulations:
Electronic Payment of Registration Fees; 60-Day Notice of Proposed Statement of Registration Information Collection; Correction, 16588
NOTICES
Meetings:
Defense Trade Advisory Group, 16652
Specially Designated Global Terrorists:
Jose Ignacio Reta de Frutos, 16652–16653
Miguel de Garikoitz Aspiazu Rubina, 16652

Surface Transportation Board
RULES
Solid Waste Rail Transfer Facilities, 16538–16547
NOTICES
Lease and Operation Exemptions:
Austin Western Railroad, LLC and Capital Metropolitan Transportation Authority, 16654

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board

Treasury Department
See United States Mint
RULES
Country of Origin of Textile and Apparel Products; Correction, 16531

U.S. Customs and Border Protection
RULES
Country of Origin of Textile and Apparel Products; Correction, 16531

United States Mint
NOTICES
Citizens Coinage Advisory Committee Membership Applications, 16655

Veterans Affairs Department
NOTICES
Meetings:
Voluntary Service National Advisory Committee, 16655–16656

Separate Parts In This Issue

Part II
Energy Department, Federal Energy Regulatory Commission, 16658–16682

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
1274a.....16525

10 CFR
Proposed Rules:
52.....16549

12 CFR
Proposed Rules:
741.....16570

14 CFR
39.....16526
71.....16530
Proposed Rules:
39 (2 documents) 16579, 16582

17 CFR
Proposed Rules:
39 (2 documents) 16587, 16588

18 CFR
35.....16658

19 CFR
12.....16531
102.....16531
141.....16531
144.....16531
146.....16531
163.....16531

20 CFR
404.....16531

21 CFR
510.....16532
529 (2 documents) 16532, 16533
558 (2 documents) 16533, 16534

22 CFR
Proposed Rules:
120.....16588
122.....16588
123.....16588
129.....16588

39 CFR
111.....16534
121.....16534
Proposed Rules:
111.....16588
121.....16588

40 CFR
261.....16534
Proposed Rules:
52.....16593

49 CFR
1155.....16538

50 CFR
622.....16547
Proposed Rules:
224.....16595
648.....16595

Rules and Regulations

Federal Register
Vol. 76, No. 57
Thursday, March 24, 2011

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

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

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1274a

[EOIR No. 166F; AG Order No. 3260–2011]

RIN 1125–AA64

Reorganization of Regulations on Control of Employment of Aliens

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule with request for comments published in the **Federal Register** on January 15, 2009. The interim rule amended regulations of the Executive Office for Immigration Review (EOIR), Department of Justice, by deleting the unnecessary, duplicative provisions in part 1274a of chapter V in title 8 of the Code of Federal Regulations (CFR) that are the responsibility of the Department of Homeland Security (DHS). This rule also revised the remaining provisions in part 1274a to reference the applicable DHS regulations.

DATES: This rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: On January 15, 2009, the Department of Justice published an interim rule with request for comments amending 8 CFR part 1274a. Reorganization of Regulations on Control of Employment of Aliens, 74 FR 2337 (Jan. 15, 2009). The Homeland Security Act of 2002, as amended, transferred the functions of the former Immigration and Naturalization Service (INS) from the Department of Justice to DHS; however, it retained under the authority of the Attorney General the functions of EOIR, a separate agency within the Department of Justice. As the existing regulations often intermingled the responsibilities of the former INS and EOIR, this transfer required a reorganization of title 8 of the CFR in February 2003, including the establishment of a new chapter V in 8 CFR pertaining to EOIR. As part of this reorganization, a number of regulations pertaining to the responsibilities of DHS intentionally were duplicated in the new chapter V because those regulations also included provisions relating to the responsibilities of EOIR. As explained in the interim rule, the Department of Justice has determined that most of the duplicated regulations in part 1274a pertain to functions that are DHS's responsibility and do not need to be reproduced in EOIR's regulations in chapter V. The interim rule deleted the unnecessary, duplicative regulations in part 1274a and revised the remaining EOIR provisions to reference the applicable DHS regulations.

The Department of Justice provided an opportunity for post-promulgation comment even though this is a rule of internal agency organization. The comment period ended March 16, 2009. Two comments were received, including one from a legal service provider and another from a member of the public. The first comment proposed adding a new document—proof of asylee status—to the list of "Documents that Establish Employment Authorization" in 8 CFR 274a.2. The Department notes that the two sections mentioned by the commenter, 8 CFR 274a.2 and 274a.12, are DHS regulations and are not part of the EOIR regulations. This comment appears to be addressing changes proposed by DHS in its interim rule, Documents Acceptable for Employment Eligibility Verification, 73 FR 76505 (Dec. 17, 2008). Furthermore, the comment did not discuss EOIR's regulations or EOIR's interim rule. The second comment expressed a general opinion about employment of aliens in the United States and did not discuss EOIR's interim rule. As neither comment addressed the changes set forth in the interim rule, there is no reason to revise the provisions of that rule. Accordingly, the interim rule amending 8 CFR part 1274a that was published on January 15, 2009, is being adopted as a final rule without change.

Regulatory Requirements

Administrative Procedure Act

The Department of Justice provided an opportunity for post-promulgation public comment under 5 U.S.C. 553, even though compliance with the requirements in 5 U.S.C. 553 with regard to notice of proposed rulemaking and delayed effective date is unnecessary. Such compliance is unnecessary because this rule makes only technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the Department regulations, reflects the transfer of functions contemplated by the Homeland Security Act of 2002, and recodifies existing regulations.

Regulatory Flexibility Act

As notice of proposed rulemaking is not required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this interim rule because there are no new or revised recordkeeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 804. This rule will not result in

an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

This action pertains to agency organization, procedures, and practices and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E, SBREFA). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects in Part 1274a

Administrative practice and procedure, Immigration.

PART 1247a—[AMENDED]

■ Accordingly, the interim rule amending 8 CFR part 1274a that was published at 74 FR 2337 on January 15, 2009, is adopted as a final rule without change.

Dated: March 18, 2011.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2011–6961 Filed 3–23–11; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0452; Directorate Identifier 98–ANE–80–AD; Amendment 39–16639; AD 2011–07–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires initial and repetitive torque inspections of the 3rd stage and 4th stage low-pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded. That AD also requires replacing LPT-to-exhaust case bolts and nuts with bolts and nuts made of Tinidur material. This new AD requires the same torque inspection, blade, and Tinidur nut replacement actions, but requires replacement of the LPT-to-exhaust case bolts with longer bolts made of Tinidur material. This AD also requires installation of crushable sleeve spacers on the bolts. This AD was prompted by nine reports of failure of Tinidur material LPT-to-exhaust case bolts, as a result of blade failure, since AD 2005–02–03 became effective. We are issuing this AD to prevent turbine blade failures that could result in uncontained engine debris and damage to the airplane.

DATES: This AD is effective April 28, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 28, 2011.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; *phone:* (860) 565–8770, *fax:* (860) 565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *phone:* 781–238–7178; *fax:* 781–238–7199; e-mail: *ian.dargin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–02–03, Amendment 39–13948 (70 FR 3867, January 27, 2005). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 1, 2010 (75 FR 38052). That NPRM proposed the same torque inspection, blade, and LPT-to-exhaust case retaining nut replacement actions as the superseded AD, but would also require replacement of the LPT-to-exhaust case bolts with longer bolts made of Tinidur material. That NPRM also proposed to require installation of crushable sleeve spacers on the LPT-to-exhaust case bolts.

Comments

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

Request to Include Other FAA-Approved Methods

One commenter, American Airlines, requested that paragraph (s) of the proposed AD be revised to include other FAA-approved methods not published in the OEM's engine manual.

We agree and changed paragraph (t) to state: "For the purpose of this AD, "refurbished" is defined as restoration of the shrouds and/or blade re-twist per the JT8D–200 Engine Manual, Part No. 773128, or per an operator's approved manual system."

Request To Allow Compliance to Alert Service Bulletin (ASB) Revision 5 or Revision 6

One commenter, Delta Airlines, requested that we allow compliance using either PW ASB No. JT8D A6224, Revision 5, dated June 11, 2004, or Revision 6, dated May 3, 2007. They stated that their experience with back-to-back testing both with and without notch gauge support did not show any measurable differences. Revision 6 introduced the notch gauge support.

We do not agree. Revision 6 of the ASB provides an improved method of inspection that ensures that the arm of the inspection tool is parallel to the engine center line during the inspection. This yields more accurate inspection results. We do allow previous credit using Revision 5 of the ASB for performing an initial inspection before the effective date of the AD. We did not change the AD.

Request To Change "Modified" to "As-Cast"

One commenter, Turborreactores S.A. de C.V., stated that in Table 4, item 5, the term "Modified" should be changed to "As-Cast" to correctly identify the blades.

We do not agree. PW Service Bulletin No. JT8D 6090 is referenced in ASB No. JT8D A6224. PW Service Bulletin No. JT8D 6090 released both a new "as-cast" blade and instructions for a field modification of existing blades, which could result in "modified" blades in the field. We did not change the AD.

Suggestion That Proposed AD Does Not Address Root Cause

One commenter, Scandinavian Airlines System, suggested that the proposed AD does not address the root cause of LPT failures, which they state is stage 3/stage 4 LPT turbine blades shroud wear and subsequent high-cycle fatigue. They suggested that the proposed AD will probably improve containment with the new design of longer case bolts with crushable sleeves, but they will not eliminate the root cause of LPT failures.

We do not agree. This AD addresses the stage 3 and stage 4 turbine blade shroud notch wear with initial and repetitive torque inspections. The longer Tinidur material LPT case bolts with crushable spacers will prevent bolt fractures and/or case ripping near the flange, and will result in only a 2.02 pound weight increase. We did not change the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 1,143 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the 3rd and 4th stage LPT blade inspection, and 1.5 work-hours per engine to replace the LPT-to-exhaust case bolts and nuts and install the crushable sleeve spacers. Required bolts, nuts, and sleeve spacers will cost about $4,576 per engine. We anticipate that 61 engines will also require blade replacement each year. Required blades will cost about $131,560 per engine. The average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $13,617,671.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–02–03, Amendment 39–13948 (70 FR 3867, January 27, 2005), and adding the following new AD:

2011–07–02 Pratt & Whitney: Amendment 39–16639. Docket No. FAA–2010–0452; Directorate Identifier 98–ANE–80–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 28, 2011.

Affected ADs

(b) This AD supersedes AD 2005–02–03, Amendment 39–13948.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. These engines are installed on, but not limited to, Boeing 727 series and McDonnell Douglas MD–80 series airplanes.

Unsafe Condition

(d) This AD results from nine reports of failure of Tinidur material LPT-to-exhaust case bolts, as a result of blade failure, since AD 2005–02–03 became effective. We are issuing this AD to prevent turbine blade failures that could result in uncontained engine debris and damage to the airplane.

Compliance

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

Requirements of AD 2005–02–03

Initial Torque Inspection for JT8D–209, –217, and –217A Engines

(f) For JT8D–209, –217, and –217A engines, perform the initial torque inspection of 3rd and 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 1, Paragraphs 1 through 3, of PW Alert Service Bulletin (ASB) No. JT8D A6224, Revision 6, dated May 3, 2007, at the applicable threshold in the following Table 1:

TABLE 1—INITIAL TORQUE INSPECTION THRESHOLD FOR JT8D–209, –217, AND –217A ENGINES

Blade type	Hours time-in-service (TIS) as of March 3, 2005 (the effective date of AD 2005–02–03)	Inspection threshold
(1) New pre-Service Bulletin (SB) No. 5867 (small notch) 3rd stage turbine blades.	Any number	Within 6,000 hours TIS.
(2) Refurbished pre-SB No. 5867 (small notch) 3rd stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 6,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.
(3) New post-SB No. 5867 (large notch) 3rd stage turbine blades.	Any number	Within 10,000 hours TIS.
(4) Refurbished post-SB No. 5867 (large notch) 3rd stage turbine blades.	(i) Fewer than 6,000	Within 7,000 hours TIS.
	(ii) 6,000 or more	Within 8,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.
(5) New pre-SB No. 6029 (small notch) 4th stage turbine blades.	Any number	Within 6,000 hours TIS.
(6) Refurbished pre-SB No. 6029 (small notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 6,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.
(7) New post-SB No. 6029 or new post-SB No. 6308 (large notch) 4th stage turbine blades.	Any number	Within 10,000 hours TIS.
(8) Refurbished post-SB No. 6029 or refurbished post-SB No. 6308 (large notch) 4th stage turbine blades.	(i) Fewer than 6,000	Within 7,000 hours TIS.
	(ii) 6,000 or more	Within 8,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.

Repetitive Torque Inspections for JT8D–209, –217, and –217A Engines

(g) For JT8D–209, –217, and –217A engines, perform repetitive torque inspections of 3rd and 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 1, Paragraph 1 of PW ASB No. JT8D A6224, Revision 6, dated May 3, 2007, at the applicable intervals in the following Table 2 and Table 3:

TABLE 2—3RD STAGE REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–209, –217, AND –217A ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB–IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB–IN (1.695 N.m) but greater than or equal to 10 LB–IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	One to three	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	Four or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB–IN (0.565 N.m)	One or more	Remove engine from service within 20 hours TIS since last inspection.

TABLE 3—4TH STAGE REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–209, –217, AND –217A ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB–IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB–IN (1.695 N.m) but greater than or equal to 10 LB–IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	One to six	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	Seven or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB–IN (0.565 N.m)	One or more	Remove engine from service within 20 hours TIS since last inspection.

(h) Subsequent repeat inspection intervals must not exceed the previous inspection interval.

JT8D–209, –217, and –217A Engines Removed From Service

(i) JT8D–209, –217, and –217A engines removed from service may be returned to service after a detailed inspection and repair or replacement of all blades of the failed stage, that exceed Engine Manual limits, is done. Information on repairing or replacing turbine blades can be found in Sections 72–53–12 through 72–53–13 of the JT8D–200 Engine Manual, Part No. 773128.

Initial Inspection for JT8D–217C and –219 Engines

(j) For JT8D–217C and –219 engines, perform the initial torque inspection of 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 2, Paragraphs 1 through 3 of PW ASB No. JT8D A6224, Revision 6, dated May 3, 2007, at the applicable threshold in the following Table 4:

TABLE 4—INITIAL TORQUE INSPECTION THRESHOLD FOR JT8D–217C AND –219 ENGINES

Blade type	TIS as of March 3, 2005	Inspection threshold
(1) New pre-SB No. 6090 (small notch) 4th stage turbine blades.	Any number	Within 5,000 hours TIS.
(2) Refurbished pre-SB No. 6090 (small notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 5,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.
(3) New post-SB No. 6090, new post-SB No. 6402, or new post-SB No. 6412 (large notch) 4th stage turbine blades.	Any number	Within 10,000 hours TIS.
(4) Refurbished "As-Cast" post-SB No. 6090, post-SB No. 6402, or post-SB No. 6412 (large notch) 4th stage turbine blades.	Any number	Within 7,000 hours TIS.
(5) Refurbished "Modified" post-SB No. 6090, post-SB No. 6402, or post-SB No. 6412 (large notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 7,000 hours TIS, or within 1,000 hours TIS from March 3, 2005, whichever occurs first.

Repetitive Torque Inspections for JT8D–217C and –219 Engines

(k) For JT8D–217C and –219 engines, perform repetitive torque inspections of 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 2, Paragraph 1 of PW ASB No. JT8D A6224, Revision 6, dated May 3, 2007, at the applicable intervals in the following Table 5:

TABLE 5—REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–217C AND –219 ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB–IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB–IN (1.695 N.m) but greater than or equal to 10 LB–IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	One to six	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	Seven or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB–IN (0.565 N.m)	One or more	Remove engine from service within 20 hours TIS since last inspection.

(l) Subsequent repeat inspection intervals must not exceed the previous inspection interval.

JT8D–217C and –219 Engines Removed From Service

(m) JT8D–217C and –219 engines removed from service may be returned to service after a detailed inspection and repair or replacement of all blades of the failed stage, that exceed Engine Manual limits, is done. Information on repairing or replacing turbine blades can be found in Sections 72–53–12 through 72–53–13 of the JT8D–200 Engine Manual, Part No. 773128.

Other Criteria for All Engine Models Listed in This AD

(n) Whenever a refurbished or used blade is intermixed with new blades in a rotor, use the lowest initial inspection threshold that is applicable.

(o) The initial torque inspection or the repetitive inspection intervals for a particular stage may not be reset, unless the blades for that stage are refurbished or replaced.

(p) Whenever a used (service run) blade is reinstalled in a rotor, the previous used time should be subtracted from the initial torque inspection threshold.

What This AD Changes

LPT-to-Exhaust Case Bolts and Nuts Replacement, and Crushable Sleeve Spacer Installation

(q) At next accessibility to the LPT-to-Exhaust Case bolts and nuts, do the following:

(1) Replace the bolts with part number (P/N) MS9557–26 bolts; and

(2) Replace the nuts with P/N 375095 nuts or P/N 490270 nuts; and

(3) Install crushable sleeve spacers, P/N 822903, under the head of the bolts.

(r) Guidance on replacing the bolts and nuts and installing the crushable sleeve spacers can be found in PW ASB No. JT8D A6494, Revision 1, dated January 26, 2010.

Previous Credit

(s) Initial inspections performed before the effective date of this AD using PW ASB No. JT8D A6224, Revision 5, dated June 11, 2004, or Revision 6, dated May 3, 2007, satisfy the initial inspection requirements of this AD.

Definitions

(t) For the purpose of this AD, "refurbished" is defined as restoration of the shrouds and/or blade re-twist per the JT8D–200 Engine Manual, Part No. 773128, or per an operator's approved manual system.

(u) For the purpose of this AD, "As-Cast" refers to blades that were machined from new castings, and "Modified" refers to blades that were derived from the pre-SB No. 6090 configuration.

(v) For the purpose of this AD, "accessibility to the LPT-to-exhaust case bolts" refers to when the inner turbine fan ducts are removed.

Alternative Methods of Compliance

(w) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance (AMOCs) for this AD if requested using the procedures found in 14 CFR 39.19. AMOCs approved for the initial and repetitive inspection requirements of AD 2005–02–03 are approved as AMOCs for this AD.

Related Information

(x) For information about this AD, contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *phone:* 781–238–7178; *fax:* 781–238–7199; *e-mail: ian.dargin@faa.gov.*

Material Incorporated by Reference

(y) You must use Pratt & Whitney Alert Service Bulletin No. JT8D A6224, Revision 6, dated May 3, 2007, to perform the torque inspections required by this AD.

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

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; *phone:* 860–565–8770, *fax:* 860–565–4503, for a copy of this service information.

(3) You may review copies of the service information at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts on March 14, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–6719 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1170; Airspace Docket No. 10–ACE–13]

Establishment of Class E Airspace; Creighton, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Creighton, NE, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Creighton Municipal Airport, Creighton, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, June 30, 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 January 10, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Creighton, NE, creating controlled airspace at Creighton Municipal Airport (76 FR 1380) Docket No. FAA–2010–1170. 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 part 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 creating Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Creighton Municipal Airport, Creighton, NE. This action is necessary for the safety and management of IFR operations at the airport.

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 creates controlled airspace at Creighton Municipal Airport, Creighton, NE.

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 part 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 NE E5 Creighton, NE [New]

Creighton Municipal Airport, NE
(Lat. 42°28′18″ N., long. 97°53′06″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Creighton Municipal Airport, and within 2 miles each side of the 130° bearing from the airport extending from the 7-mile radius to 13.2 miles southeast of the airport.

Issued in Fort Worth, Texas on March 15, 2011.

Richard J. Kervin, Jr.,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–6854 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12, 102, 141, 144, 146, and 163

[CBP Dec. 11–09; USCBP–2005–0009]

RIN 1515–AD57 (Formerly RIN 1505–AB60)

Country of Origin of Textile and Apparel Products; Correction

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: Customs and Border Protection (CBP) published in the **Federal Register** of March 17, 2011, a document which adopted as a final rule, with some changes, interim amendments to the CBP regulations to revise, update, and consolidate the regulatory provisions relating to the country of origin of textile and apparel products. The final rule document contained two errors in the Background portion of the document. The first error concerns an inadvertent reference to imported "antique Persian carpets" in an example prepared by CBP. Because carpets of Iranian-origin are currently prohibited from importation into the United States, the example should not have referenced Persian antique carpets. The example is changed to reflect a non-prohibited article—a Turkish antique carpet. The second error consists of an outdated Internet address that was provided by CBP relating to certain instructions for the completion of CBP Form 7501. This document corrects these two errors.

DATES: Effective on March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Roberts Abels, Textile Operations, Office of International Trade, (202) 863–6503.

SUPPLEMENTARY INFORMATION: CBP published a final rule document in the **Federal Register** of March 17, 2011 (76 FR 14575), concerning the country of origin of textile and apparel products. The Background portion of the document included two errors: (1) An inadvertent reference to "Persian" carpets instead of "Turkish" carpets in an example provided by CBP; and (2) an outdated Internet address concerning certain instructions for the completion of CBP Form 7501. This document corrects these two errors.

In rule FR Doc. 2011–6253 published on March 17, 2011 (76 FR 14575), make the following corrections:

(1) On page 14579, in the first column, remove the word "Persian" in the first bullet point and add in its place the word "Turkish";

(2) On page 14581, in the second column, remove the parenthetical Internet address and add in its place the Internet address "(*http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/entry_summary/cbp7501/7501_instruction.ctt/7501_instruction.doc*)".

Dated: March 18, 2011.

Harold M. Singer,

Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2011–6945 Filed 3–23–11; 8:45 am]

BILLING CODE 9111–14–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2011–0019]

RIN 0960–AH33

Technical Correction for Neurological Listing Cross-Reference

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are making a technical correction to a listing in the neurological body system in the Listing of Impairments. We are correcting a cross-reference that became outdated when we published revisions elsewhere in the Listing of Impairments in 2010. This technical correction will provide an updated cross-reference to conform to the 2010 revisions.

DATES: This final rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On June 2, 2010, we published final rules that revised the portions of section 102.00 (the Special Senses and Speech body system for children) regarding the evaluation of hearing loss.[1] The rules became effective on August 2, 2010. When we revised the listings for hearing loss in children, we inadvertently did not also revise listing 111.09C in the neurological disorders body system for children. That listing, which addresses communication impairment associated with a neurological disorder, cross-refers to our prior listing for hearing loss in children: listing 102.08. We removed listing 102.08 when we published the 2010 final rules. Since we no longer have that listing, we must correct listing 111.09C.

Before the final rules we published in 2010 became effective, listing 102.08 was the only listing for hearing loss in children. We now have two such listings: listings 102.10 and 102.11. In the notice of proposed rulemaking for the hearing loss listing changes, we explained that we were revising listing 102.08 and changing it to listing 102.10, and that we would use it only for children who do not have cochlear implants. We also explained that we were adding a new listing 102.11 for children who have cochlear implants.[2] Both listings include criteria for children with hearing loss who have communication impairments.[3] Therefore, we are changing the cross-reference in listing 111.09C to refer to both of the current listings.

[1] 75 FR 30693 (June 2, 2010).

[2] 73 FR 47103, 47107 (August 13, 2008).

[3] *See* listings 102.10B2, 102.10B3, and 102.11B, 75 FR at 30704.

Regulatory Procedures

We follow Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The change we are making in this rule only corrects an error in a cross-reference. Because the change we are making is only a minor technical correction to a rule to correct an outdated cross-reference, we have determined that the opportunity for prior comment is unnecessary. Therefore, we are issuing this rule as a final rule.

In addition, we find that there is good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). For the reasons already discussed, because this change is a minor technical correction to a rule, a delay in the effective date is unnecessary.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, it was not subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This rule does not create any new or affect any existing collections, and therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising section 111.09C of part B to read as follows:

APPENDIX 1 TO SUBPART P OF PART 404—LISTING OF IMPAIRMENTS

* * * * *

Part B

* * * * *

111.00 *[Neurological]*

* * * * *

111.09 * * *

C. Impairment of hearing as described under the criteria in 102.10 or 102.11.

* * * * *

[FR Doc. 2011–6983 Filed 3–23–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Change of Sponsor's Name and Address; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of April 20, 2010 (75 FR 20522) amending the animal drug regulations to reflect changes to a sponsor's name and address. That document contained errors in the regulatory text. FDA is correcting the tables listing sponsors of approved animal drug applications (NADAs) by adding a change to the sponsor's drug labeler code (DLC). Cross-references to the sponsor's DLC are amended in two sections of the Code of Federal Regulations (CFR) containing the conditions of use approved animal drug products. These corrections are being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a document in the **Federal Register** of April 20, 2010 (75 FR 20522) amending the animal drug regulations to reflect changes to a sponsor's name and address. That document contained errors in the regulatory text. FDA is correcting the tables listing sponsors of approved animal drug applications (NADAs) by adding a change to the sponsor's drug labeler code (DLC). Cross-references to the sponsor's DLC are amended in two sections of the Code of Federal Regulations (CFR) containing the conditions of use approved animal drug products. These corrections are being made to improve the accuracy of the animal drug regulations.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and Recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Accordingly, 21 CFR parts 510 and 529 are corrected by making the following correcting amendments:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entry for "Piramal Critical Care, Inc."; and in the table in paragraph (c)(2), remove the

entry for "060307" and in numerical sequence, add an entry for "066794" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Piramal Critical Care, Inc., 3850 Schelden Circle, Bethlehem, PA 18017	066794
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
066794	Piramal Critical Care, Inc., 3850 Schelden Circle, Bethlehem, PA 18017.
* * * * *	

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1186 [Corrected]

■ 4. In paragraph (b) of § 529.1186, remove "060307, and 065085" and in its place add "065085, and 066794".

§ 529.2150 [Corrected]

■ 5. In paragraph (b) of § 529.2150, remove "060307" and in its place add "066794".

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6795 Filed 3–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2010–N–0002]

Certain Other Dosage Form New Animal Drugs; Detomidine; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of April 23, 2010 (75 FR 21162), that amended the animal drug regulations to reflect approval of an original new animal drug application (NADA). FDA is correcting a paragraph describing limitations to the approved conditions of use for detomidine hydrochloride oromucosal gel in horses. This correction is being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *George.Haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA published a document in the **Federal Register** of April 23, 2010 (75 FR 21162), that amended the animal drug regulations to reflect approval of an original NADA. FDA is correcting a paragraph describing limitations to the approved conditions of use for detomidine hydrochloride oromucosal gel in horses. This correction is being made to improve the accuracy of the animal drug regulations.

List of Subjects in 21 CFR Part 529

Animal drugs.

Accordingly, 21 CFR part 529 is corrected by making the following correcting amendment:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 529.536, amend paragraph (c)(3) by adding a sentence after the first sentence to read as follows:

§ 529.536 Detomidine.

* * * * *

(c) * * *

(3) * * * Do not use in horses intended for human consumption.

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6791 Filed 3–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications; Aklomide; Levamisole Hydrochloride; Nitromide and Sulfanitran; Roxarsone; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of October 26, 2010 (75 FR 65565) amending the animal drug regulations. The October 26, 2010, final rule amended the regulations by removing those portions that reflect approval of eight new animal drug applications. The final rule inadvertently failed to add conforming amendments in § 558.530. FDA is correcting the animal drug regulations by removing cross references for use of the withdrawn drugs in combination drug medicated feed. This correction is being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a document in the **Federal Register** of October 26, 2010 (75 FR 65565) amending the animal drug regulations. The October 26, 2010, final rule amended the regulations by removing those portions that reflect approval of eight new animal drug applications. The final rule inadvertently failed to add conforming amendments in § 558.530. FDA is correcting the animal drug regulations by removing cross references for use of the withdrawn drugs in combination

drug medicated feed. This correction is being made to improve the accuracy of the animal drug regulations.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Accordingly, 21 CFR part 558 is corrected by making the following correcting amendment:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.530 [Corrected]

■ 2. In § 558.530, remove and reserve paragraphs (d)(4)(i) and (d)(4)(xvii).

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6790 Filed 3–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

New Animal Drugs for Use in Animal Feeds; Florfenicol; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of June 17, 2010 (75 FR 34361) revising the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA). That document contained an incorrect table entry describing the maximum florfenicol concentration in Type B medicated swine feeds. This correction is being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a document in the **Federal Register** of June 17, 2010 (75 FR 34361) revising the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA). That document contained an incorrect table entry describing the maximum florfenicol concentration in Type B medicated swine feeds. This correction is being made to improve the accuracy of the animal drug regulations.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Accordingly, 21 CFR part 558 is corrected by making the following correcting amendments:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Corrected]

■ 2. In paragraph (d) of § 558.4, in the "Category II" table, in the "Type B maximum (100x)" column, in the entry for "Florfenicol", remove "Swine feed: n/a", "Catfish feed: n/a", and "Salmonid feed: n/a" and in their places add "9.1 g/lb (2.0%)".

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6789 Filed 3–23–11; 8:45 am]

BILLING CODE 4160–01–P

POSTAL SERVICE

39 CFR Parts 111 and 121

Combined Mailings of Standard Mail and Periodicals Flats

AGENCY: Postal Service.™

ACTION: Final rule; withdrawal.

SUMMARY: The Postal Service is withdrawing a final rule that would have provided a new option for mailers to combine mailings of Standard Mail ® flats and Periodicals flats within the same bundle, when placed on pallets, and to combine bundles of Standard Mail flats and bundles of Periodicals flats on the same pallet. The Postal Service also withdraws the *Code of Federal Regulations* revision to reflect that Standard Mail service standards apply to all Periodicals flats pieces entered in such combined mailings.

DATES: The final rule published on February 28, 2011 (76 FR 10757), is withdrawn effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Leon at 202–268–7443, or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on February 28, 2011, the Postal Service provided a new option for mailers to combine Standard Mail flats and Periodicals flats, when bundled and placed on pallets. Mailers using this option would have combined different-class mailpieces within the same bundle (comail), or combined separate same-class bundles (of different classes) on the same pallet (copalletize) to maximize presorting or to qualify for deeper destination entry discounts. All mailpieces prepared under this option were required to be bundled and placed on pallets.

In consideration of concerns expressed by members of the mailing community, the Postal Service has elected to withdraw this final rule and will publish these standards as a proposed rule concurrently.

The Postal Service also withdraws the revision to 39 CFR part 121.2 whereby we added a new item "c" to describe the USPS processing of Periodicals mailpieces included in combined mailings of Standard Mail flats and Periodicals flats, and specifying that Periodicals mailpieces included in these mailings will be assigned the service standards applicable to Standard Mail pieces.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–6911 Filed 3–23–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R03–RCRA–2010–0132; FRL–9285–7]

Hazardous Waste Management System Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by Babcock & Wilcox Nuclear Operations Group, Inc., the current owner, and to BWX Technologies, Inc., as predecessor in interest to the current owner, identified collectively hereafter in this preamble as "B&W NOG," to exclude (or delist) on a one-time basis from the lists of hazardous waste, a certain solid waste generated at its Mt. Athos facility near Lynchburg, Virginia.

After careful analysis, we have concluded that the petitioned waste is

not hazardous waste. This exclusion applies to 148 cubic yards of sludge currently deposited in two on-site surface impoundments designated as Final Effluent Ponds (FEPs) 1 and 2. Accordingly, this final rule conditionally excludes this volume of the petitioned waste from the requirements of the hazardous waste regulation under the Resource Conservation and Recovery Act (RCRA).

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R03–RCRA–2010–0132. The public docket for this final rule is located at the Environmental Protection Agency Region III, Land and Chemicals Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029. The docket is available for viewing from 8 a.m. to 3 p.m., Monday through Friday, excluding Federal holidays. You may copy material from any regulatory docket at a cost of $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You should make an appointment with the office at least 24 hours in advance. Docket materials are also available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket for the B&W NOG facility petition, contact David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029, by calling 215–814–3395 or by e-mail at *friedman.davidm@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. Overview Information
II. Background
A. What is a delisting petition?
B. What regulations allow a hazardous waste generator to petition for a delisting of its waste?
C. What information must the petitioner supply?
III. B&W NOG's Delisting Petition
A. What waste is the subject of B&W NOG's petition?
B. What information was submitted in support of this petition?
IV. EPA's Evaluation and Final Decision
A. Why is EPA approving this petition?
B. What limitations are associated with this exclusion?
C. When is the final rule effective?
D. How does this action affect States?
V. Public Comment Received on the Proposed Exclusion
A. Who submitted comments on the proposed rule?
B. Comment and Response From EPA
VI. Statutory and Executive Order Reviews

I. Overview Information

On October 7, 2010, we proposed to grant a petition submitted by B&W NOG to exclude (or delist) from the definition of hazardous waste on a one-time basis, wastewater treatment sludge generated at its Mt. Athos facility near Lynchburg, VA, and currently deposited in two on-site surface impoundments designated as FEPs 1 and 2. Today we are finalizing the decision to grant a conditional exclusion as described in the October 7, 2010 proposed rule (75 FR 62040).

II. Background

A. What is a delisting petition?

A delisting petition is a request from a facility to EPA or an authorized State to exclude waste from the list of hazardous wastes on a site-specific basis. A facility petitions EPA because it believes the waste should not be considered hazardous under RCRA.

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed. The criteria which EPA uses to evaluate a waste for listing are found in 40 CFR 261.11. An explanation of how these criteria apply to a waste is contained in the background document for that particular listed waste.

In addition to the criteria that we used when we originally listed the waste, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics found in 40 CFR 261, Subpart C, and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste as required by Section 3001(f) of RCRA (42 U.S.C. 6921(f)) and 40 CFR 260.22(a).

A petitioner who is granted a delisting by EPA or an authorized State remains obligated under RCRA to confirm that the delisted waste remains nonhazardous based on the hazardous waste characteristics and must ensure that the waste meets the conditions set forth.

B. What regulations allow a hazardous waste generator to petition for a delisting of its waste?

Under 40 CFR 260.20 and 262.22, a generator may petition EPA to remove its waste from hazardous waste regulation by excluding it from the lists of hazardous wastes contained in 40 CFR 261, Subpart D. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What information must the petitioner supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, EPA must determine that the waste is not hazardous for any other reason.

III. B&W NOG's Delisting Petition

A. What waste is the subject of B&W NOG's petition?

On February 21, 2003, B&W NOG (then known as BWX Technologies, Inc.) petitioned EPA to exclude from the lists of hazardous waste contained in 40 CFR 261.31 on a one-time basis, the sludge which was deposited in FEPs 1 and 2 because it believed that the petitioned waste did not meet any of the criteria for which the waste was listed and because there were no additional constituents or factors that would cause the waste to be hazardous. This sludge was derived in part from the treatment of wastewater in the pickle acid treatment system and, therefore, was designated as EPA Hazardous Waste No. F006 (wastewater treatment sludge from electroplating operations). The volume of sludge contained in each FEP at that time was determined to be 6,600 cubic yards, for a combined sludge volume of 13,200 cubic yards.

In addition, although the routing of treated wastewaters into the FEPs has changed during the operating history of these units, at some point they have both received treated wastewater from the low level radioactive treatment system. Because of this, the sludge in these units is classified as a "mixed waste" under RCRA. A mixed waste is defined as a waste that contains both a radioactive component subject to the Atomic Energy Act (AEA), as amended, and a hazardous component subject to RCRA.

On September 3, 2008, B&W NOG notified EPA that it had successfully completed a sludge removal project at FEPs 1 and 2. Sludge was removed from these units and disposed of at a mixed

waste disposal facility permitted under the authority of both RCRA and the Atomic Energy Act. B&W NOG conservatively estimated that of the 13,200 cubic yards of sludge in both units, only 148 cubic yards (less than 2 percent of the original volume) remained. In this notification, B&W NOG requested that its petition be amended to reflect the reduced volume, and that the Agency proceed with the delisting request based on the new volume.

For a detailed description of how the waste was generated, please refer to the October 7, 2010 proposed rule.

B. What information was submitted in support of this petition?

B&W NOG submitted detailed descriptions of the processes generating the waste. B&W NOG also asserted that the waste does not meet the criteria for which the F006 waste was listed and that there are no other factors that might cause the waste to be hazardous.

To support its assertion that the waste is not hazardous, B&W NOG implemented a comprehensive strategy for evaluating the sludge in the FEPs consisting of a two-phase sampling and analysis plan. Details of this plan and the analytical results from representative samples of the sludge are contained in the October 7, 2010 proposed rule.

IV. EPA's Evaluation and Final Decision

A. Why is EPA approving this petition?

Today EPA is finalizing a one-time exclusion for the 148 cubic yards of wastewater treatment sludge generated at the B&W NOG's Mt. Athos facility and currently deposited in two on-site surface impoundments designated as FEPs 1 and 2. B&W NOG petitioned EPA to exclude, or delist, the wastewater treatment sludge because B&W NOG believed that the petitioned waste did not meet the criteria for which it was listed and that the waste was not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984 to RCRA. *See,* Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

On October 7, 2010, we proposed to conditionally exclude the remaining 148 cubic yards of wastewater treatment sludge currently deposited in FEPs 1 and 2 at the B&W NOG's Mt. Athos facility from the list of hazardous waste in 40 CFR 261.31, and requested public comment on the proposed rule. For reasons stated in both the proposed rule and in today's preamble, we determined that B&W NOG's wastewater treatment sludge should be excluded from regulation as a hazardous waste.

B. What limitations are associated with this exclusion?

This exclusion applies only to the estimated 148 cubic yards of sludge currently deposited in FEPs 1 and 2 at the B&W NOG's Mt. Athos facility.

B&W NOG states in its petition that this sludge contains low levels of radioactivity, and that it is, and if delisted by EPA will remain subject to, Nuclear Regulatory Commission (NRC) regulations. Although the sludge currently resides in the FEPs and will continue to do so for many years, the FEPs will be subject to NRC decommissioning rules when they are taken out of service. At that time, any sludge remaining in the units will have to be removed and disposed of in a facility licensed to accept low-level radioactive waste.

In order to adequately track wastes that have been delisted, when a decision is made to dispose of all or of part of the sludge off-site, we are requiring that B&W NOG provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. B&W NOG will be required to provide this notification at least 60 calendar days prior to commencing these activities.

C. When is the final rule effective?

This rule is effective March 24, 2011. HSWA amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can and will become effective immediately upon publication pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d).

D. How does this action affect States?

Today's exclusion is being issued under the Federal RCRA delisting program. Therefore, only States subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in States that have received EPA authorization to make their own delisting decisions. Also, this exclusion may not be effective in States having a dual system that includes Federal RCRA requirements and their own requirements.

We allow States to impose their own regulatory requirements that are more stringent than EPA's under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's hazardous waste program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make delisting decisions pursuant to EPA authorized State regulations. Therefore, the petition for an exclusion that EPA is granting today does not necessarily apply within those authorized States. If B&W NOG transports the petitioned waste to, or manages the waste in, any State which has received delisting authorization from EPA, B&W NOG must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

V. Public Comment Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

We received public comments on the October 7, 2010 proposed exclusion from counsel for B&W NOG, on behalf of the petitioner.

B. Comment and Response From EPA

Comment: The commenter requested a clarification of the regulatory status of the minimal amounts of newly generated suspended solids that are not captured by the dewatering process for the currently generated wastewater treatment sludge, which is generated for the purpose of disposal as filter cake solids. As explained in the October 7, 2010 proposed exclusion, on January 14, 2000 (65 FR 2337), EPA granted an exclusion to B&W NOG (known then as BWX Technologies, Inc.), for its currently generated F006 wastewater treatment sludge (*i.e.,* the filter cake solids). However, suspended solids carry over in the effluent from the sludge dewatering process and settle out in the FEPs as a portion of the sludge accumulation in these units (currently only in FEP 2).

The commenter stated that it was not clear whether the "currently deposited" wording in the proposal refers to the sludge now residing in the FEPs, or the current sludge plus the minimal future accumulations contributed by the suspended solids carryover. The commenter stated that there is no practical difference between the filter cake solids, the FEP sludge that is the subject of today's exclusion, and the suspended solids carryover. The commenter further stated that the filter cake solids and the suspended solids carryover are physically (except for water content) and chemically identical, since they are both the precipitated electroplating sludge either (1) captured on the filter media and subject to the January 14, 2000 exclusion or (2) escaping that process, carried over in the effluent from the filtering process, subsequently settling out in FEP 2 and similarly subject to the earlier delisting.

Response: As noted in the October 7, 2010, proposed exclusion, on January 14, 2000, EPA finalized a delisting for the current production of filter cake solids from the pickle acid wastewater system. The suspended solids carryover that is the subject of this commenter's request for clarification are uncaptured portions of the newly generated filter cake which escape the dewatering process. EPA agrees with the commenter that these suspended solids are identical in all respects to the filter cake except for water content.

Recognizing that no filtration process is 100 percent efficient, it was EPA's intention that this minimal amount of newly generated suspended solids carryover described above be included as part of the January 14, 2000 exclusion for the currently generated sludge.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the Delisting Risk Assessment Software (DRAS) program, which considers health and safety risks to infants and children, to calculate the cumulative carcinogenic and noncarcinogenic risk. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 17, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Appendix IX of Part 261—[Amended]

■ 2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Babcock & Wilcox Nuclear Operations Group, Inc., current owner, and BWX Technologies, Inc., predecessor in interest to the current owner, identified collectively hereafter as "B&W NOG".	Lynchburg, Virginia	Wastewater treatment sludge from electroplating operations (Hazardous Waste Number F006) generated at the Mt. Athos facility near Lynchburg, VA and currently deposited in two on-site surface impoundments designated as Final Effluent Ponds (FEPs) 1 and 2. This is a one-time exclusion for 148 cubic yards of sludge and is effective after March 24, 2011. (1) *Reopener language.* (A) If B&W NOG discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then B&W NOG must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information (B) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment (2) *Notification Requirements* In the event that the delisted waste is transported off-site for disposal, B&W NOG must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action
* *	* *	* * *

[FR Doc. 2011–6892 Filed 3–23–11; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1155

[Docket No. EP 684]

Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Clean Railroads Act of 2008 amended the law to restrict the jurisdiction of the Surface Transportation Board (Board or STB) over solid waste rail transfer facilities. The Clean Railroads Act also added three new statutory provisions that address the Board's regulation of such facilities, which is now limited to issuance of "land-use-exemption permits" in certain circumstances. Upon receiving a land-use-exemption permit issued by the Board, a solid waste rail transfer facility need not comply with State laws, regulations, orders, and other requirements affecting the siting of the facility, except to the extent that the Board requires compliance with any of those requirements. The Clean Railroads Act provides that a solid waste rail transfer facility must comply with all applicable Federal and State requirements respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, in the same manner as any similar solid waste management facility not owned or operated by or on behalf of a rail carrier, except for laws affecting the siting of the facility that are covered by the land-use-exemption permit. As required by the Clean Railroads Act, on January 14, 2009, the Board issued interim rules that were published in the **Federal Register** on January 27, 2009 (*2009 interim rules*). Based on the comments received and further evaluation, the Board now modifies the review process for land-use-exemption permits under the Clean Railroads Act and modifies other aspects of the *2009 interim rules,* in the interest of clarity and efficiency. The Board requests comments on the modifications contained in the interim rules.

DATES: *Effective date:* March 24, 2011.

Comment date: Comments are due May 23, 2011. Reply comments are due by June 22, 2011.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 684, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10501(a), the Board has jurisdiction over "transportation by rail

carrier." Section 10501(b), as modified by the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803 (1995), provides that both "the jurisdiction of the Board over transportation by rail carriers" (which includes the carriers' rail facilities, *see* 49 U.S.C. 10102(9)), and the "remedies provided under [49 U.S.C. 10101–11908]" are "exclusive," and "preempt the remedies provided under Federal and State laws." Prior to enactment of the Clean Railroads Act of 2008, Public Law 110–432, 122 Stat. 4848 (Clean Railroads Act or CRA), on October 16, 2008, the Board's preemptive jurisdiction extended to solid waste rail transfer facilities owned or operated by rail carriers. Accordingly, State permitting or preclearance requirements (including environmental, zoning, and often land-use requirements) that, by their nature, could be used to deny a railroad the right to conduct its operations or proceed with transportation activities at rail transfer facilities, including solid waste rail transfer facilities, as authorized by the Board, were preempted. *See* 49 U.S.C. 10501(b); *N.Y. Susquehanna & W. Ry.* v. *Jackson,* 500 F.3d 238, 252–55 (3d Cir. 2007); *Green Mountain R.R.* v. *Vermont,* 404 F.3d 638, 641–43 (2d Cir. 2005). Other State actions related to these facilities were preempted if, as applied, they would have the effect of unreasonably burdening or interfering with transportation by rail carrier. *See N.Y. Susquehanna,* 500 F.3d at 252; *Green Mountain,* 404 F.3d at 643.

The CRA modified the Board's jurisdiction over solid waste rail transfer facilities. The CRA provides that solid waste rail transfer facilities, as defined in 49 U.S.C. 10908(e)(1)(H), must now comply with all applicable Federal and State requirements (including environmental requirements) that apply to similar solid waste management facilities that are not owned or operated by or on behalf of a rail carrier, except as otherwise provided in the Clean Railroads Act.[1] The CRA gives the Board the authority, if petitioned, to issue land-use-exemption permits that preempt State and local laws and regulations "affecting the siting" of such facilities (except to the extent that the Board requires the facility to comply with such provisions). 49 U.S.C. 10909(f).[2]

The Board received numerous comments on the *2009 interim rules.* We now revise the original rules to streamline the application process based on suggestions made in the parties' comments and on the Board's own review of the current interim regulations. We have made several significant revisions to the process set forth in the *2009 interim rules* in order to streamline and improve the application process for a land-use-exemption permit. These revisions include: (a) Eliminating the requirement to identify all laws that affect the siting of a facility; (b) incorporating the provisions of original[3] § 1155.23 into other sections; (c) generally requiring a full Environmental Impact Statement (EIS)[4] that includes an analysis of the environmental factors listed in 49 U.S.C. 10909(d); and (d) providing a post-EIS comment period that would allow parties to use the information contained in the EIS to comment on whether the land-use-exemption permit should be granted and any conditions that could be imposed. The major revisions to the *2009 interim rules* are discussed in Section I of the Board's complete decision posted on the Board's Web site, *http://www.stb.dot.gov.*

In Section II of the Board's complete decision, the Board also addresses other comments received on the *2009 interim rules* and revisions made in response to the comments. Other changes were made that are not substantive, and were not precipitated by comments. The Board is inviting interested parties to comment, but we request parties limit their comments to new issues raised by the revisions.

Good cause exists for the interim rules to become effective while further notice and comment proceeds. *See* 5 U.S.C. 553(b)(3)(B). The CRA mandated that the Board quickly establish rules to provide a process for facilities to obtain a land-use-exemption permit pending the final rules. Although the Board sought comment on the original rules, those rules were codified as interim rules. While we seek further comment on aspects of the regulations that were not part of the *2009 interim rules,* we believe that all of the revisions should now be implemented as interim rules. The public would be better served by placing these refined regulations in effect on an interim basis, rather than leaving in place the rules issued in *2009,* which were drafted without any input from industry and other interested parties. As discussed below, the revised interim rules provide the Board with a framework for a more informed decision-making process if the agency is called upon to decide whether to issue a land-use-exemption permit before final rules are issued. The Board will expeditiously move toward issuing final regulations following the public comment period.

Additional information is contained in the Board's decision to be served on March 24, 2011. A copy of the Board's decision is available for inspection or copying at the Board's Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423–0001, and is posted on the Board's Web site, *http://www.stb.dot.gov.* Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0236.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether the collection of information associated with the land-use-exemption-permit application in the interim rules at CFR part 1155, and further described in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimate; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included in the Appendix. The collection of information associated with these proposed interim rules will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

In accordance with the Regulatory Flexibility Act at 5 U.S.C. 605(b), we certify that the interim rules would not have a significant economic impact on a substantial number of small entities. The basis for this determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR part 121, under neither the statute nor the interim

[1] The CRA does not affect the Board's jurisdiction, or the scope of Federal preemption, over a rail carrier's transportation-related activities involving commodities other than solid waste. 49 U.S.C. 10908(d).

[2] The decision accompanying the *2009 interim rules* contains a more detailed discussion of the CRA and the Board's initial implementation of that act.

[3] The use of "original" is to signify the CFR numbering as it appeared in the *2009 interim rules* where the addition or subtraction of sections has required these interim rules to have a different numbering.

[4] An EIS refers to the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA), for a major Federal action significantly affecting the quality of the human environment. The Board's EIS process is described at 49 CFR 1105.10.

rules could the Board, on its own, require a party to apply for a Board permit. *See* 49 U.S.C. 10908(b)(2)(B), 10909(a). In general, that decision is solely within the control of the entity. The one exception is that a governor of the State in which an existing facility is located could petition the Board, under 49 U.S.C. 10908(b)(2)(B) and 49 CFR part 1155 subpart B, to require that facility to obtain a land-use-exemption permit in order for it to continue to operate. Even in that circumstance, the authority lies with the State governors—not the Board—to initiate the Board's processes. In all other scenarios, a party can avoid being subject to the Board's rules regarding land-use-exemption permits by complying with State requirements. Therefore, the interim rules will not circumscribe or mandate the conduct of a substantial number of small entities.

Moreover, there are no alternatives to the interim rules that would adequately achieve the objectives of the CRA. The only scenario in which a small entity might be compelled to avail itself of the new Board processes (when a State governor has properly petitioned the Board under 49 CFR part 1155 subpart B) must be included in the rules because it is specifically required under the CRA. 49 U.S.C. 10908(b)(2)(B). Finally, we have provided a waiver provision that could mitigate any significant negative impact on small entities—an applicant may request a waiver of any particular part of the application procedures. *See* 49 CFR 1155.22(d)(4) (original 49 CFR 1155.24(d)(2)). A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1155

Administrative practice and procedure, Railroad, Solid waste rail transfer facility.

Decided: March 14, 2011.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Andrea Pope-Matheson,

Clearance Clerk.

■ For the reasons set forth in the preamble, the Surface Transportation Board revises part 1155 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

Subpart A—General

Sec.
1155.1 Purpose and scope.
1155.2 Definitions.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

1155.10 Contents of petition.
1155.11 Filing and service of petition.
1155.12 Participation in petition procedures.
1155.13 Board determination with respect to a Governor's petition.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

1155.20 Notice of intent to apply for a land-use-exemption permit.
1155.21 Contents of application.
1155.22 Filings and service of application.
1155.23 Participation in application proceedings.
1155.24 Environmental review.
1155.25 Transfer and termination of the land-use-exemption permit.
1155.26 Board determinations under 49 U.S.C. 10909.
1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.
Appendix A to Part 1155—Form Notice Of Intent To Apply
Appendix B to Part 1155—Form **Federal Register** Notice

Authority: 49 U.S.C. 721(a), 10908, 10909, 10910.

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

Subpart A—General

§ 1155.1 Purpose and scope.

49 U.S.C. 10501(c)(2)(B) excludes solid waste rail transfer facilities from the Board's jurisdiction except as provided under 49 U.S.C. 10908 and 10909. Sections 10908 and 10909 provide the Board authority to issue land-use-exemption permits for solid waste rail transfer facilities when certain conditions are met. The regulations in this part concern land-use-exemption permits and the Board's standard for review.

§ 1155.2 Definitions.

(a) Unless otherwise provided in the text of these regulations, the following definitions apply in this part:

(1) *Commercial and retail waste* means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(2) *Construction and demolition debris* means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(3) *Environmental Impact Statement or* "*EIS*" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action significantly affecting the quality of the human environment.

(4) *Household waste* means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(5) *Industrial waste* means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 *et seq.*), mining or oil and gas waste.

(6) *Institutional waste* means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(7) *Municipal solid waste* means household waste, commercial and retail waste, and institutional waste.

(8) *Office of Environmental Analysis or* "*OEA*" means the Board staff that prepares the Board's environmental documents and analyses.

(9) *Solid waste* means construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste, as determined appropriate by the Board, but not waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles), or waste generated as a result of a railroad accident, incident, or derailment.

(10) *Solid waste rail transfer facility*—(i) Means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in 49 U.S.C. 10102) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

(ii) Does not include—

(A) The portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(B) A facility where solid waste is transferred or transloaded solely from a tank truck directly to a rail tank car.

(11) *Sludge* means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the terms *household waste, commercial and retail waste,* and *institutional waste* do not include yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(c) "*Land-use-exemption permit*" means the authorization issued by the Board pursuant to the authority of 49 U.S.C. 10909(a) and includes the term "siting permit" in 49 U.S.C. 10909(e).

(d) "*State laws, regulations, orders, or other requirements affecting the siting of a facility,*" as used in 49 U.S.C. 10909(f) and 49 CFR 1155.27(d), include the requirements of a State or a political subdivision of a State, including a locality or municipality, affecting the siting of a facility.

(e) "*State requirements*" as used in 49 U.S.C. 10908 does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

§ 1155.10 Contents of petition.

A petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, submitted by the Governor of the State or that Governor's designee, shall contain the following information:

(a) The Governor's name.

(b) The State's name and the name of any agency filing on behalf of the Governor.

(c) The full address of the solid waste rail transfer facility, or, if not available, the city, State, and United States Postal Service ZIP code.

(d) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated.

(e) A good-faith certification that the facility qualified as a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008.

(f) Relief sought (that the rail carrier that owns or operates the facility be required to apply for a land-use-exemption permit).

(g) Name, title, and address of representative of petitioner to whom correspondence should be sent.

§ 1155.11 Filing and service of petition.

(a) When the petition is filed with the Board, the petitioner shall serve concurrently, by first class mail, a copy of the petition on the rail carrier that owns or operates the solid waste rail transfer facility and on the facility if the address is different than the rail carrier's address. A copy of the certificate of service shall be filed with the Board at the same time.

(b) Upon the filing of a petition, the Board will review the petition and determine whether it conforms to all applicable regulations. If the petition is substantially incomplete or its filing otherwise defective, the Board will reject the petition without prejudice for stated reasons by order within 15 days from the date of filing of the petition.

(c) If the petition is rejected, a revised petition may be resubmitted, and the Board will determine whether the resubmitted application conforms with all prescribed regulations.

§ 1155.12 Participation in petition proceedings.

(a) An interested person may file a reply to the petition challenging any of the information contained in the petition that is required by 49 CFR 1155.10(c) through (e) and may offer evidence to support its contention. The petitioner will have an opportunity to file a rebuttal.

(b) A facility can acknowledge that it was a solid waste rail transfer facility on October 16, 2008, but no longer operates as such and therefore is not required to seek a land-use-exemption permit. To do so, a facility must file with the Board a certification stating that it:

(1) No longer operates as a solid waste transfer facility;

(2) Understands that by certifying that it no longer operates as a solid waste transfer facility, it no longer qualifies as a facility in existence on October 16, 2008 for purposes of the Clean Railroad Act and these regulations; and

(3) Understands that if it seeks a land-use-exemption permit in the future, it would be required to do so as a proposed facility.

(c) Filing and service of replies.

(1) Any reply shall be filed with the Board (the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 20 days of the filing with the Board of the petition.

(2) A copy of the reply shall be served on petitioner or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Any rebuttal to a reply shall be filed and served by petitioner no later than 30 days after the filing of the petition.

§ 1155.13 Board determination with respect to a Governor's petition.

The Board shall accept the Governor's complete petition on a finding that the facility qualified as a solid waste rail transfer facility, as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008. If the Board finds that the facility currently does not qualify for or require a land-use-exemption permit, any future use of the facility as a solid waste rail transfer facility would require an application for a land-use-exemption permit as a proposed facility and/or the proper State permits. In a decision granting the Governor's petition, the Board shall require that the rail carrier that owns or operates the facility, or the operator of the facility, file a land-use-exemption-permit application within 120 days of the service date of the decision.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

§ 1155.20 Notice of intent to apply for a land-use-exemption permit.

(a) *Filing and publication requirements.* An applicant (*i.e.,* a solid waste rail transfer facility, or the rail carrier that owns or operates the facility) shall give its Notice of Intent to file a land-use-exemption-permit application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board in the format prescribed in part 1155 Appendix A. The Notice of Intent shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) The Governor of the State where the facility is located;

(ii) The municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is located or proposed to be located; and

(iii) The appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2).

(3) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the proposed or existing facility is located.

(b) *Time limits.* (1) The Notice of Intent must be served on the parties discussed above at least 15 days, but not more than 30 days, prior to the filing of the land-use-exemption-permit application;

(2) The three required newspaper Notices must be published within the 30-day period prior to the filing of the application; and

(3) The Notice of Intent must be filed with the Board either concurrently with service on the required parties or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant must also submit an Environmental and/or Historic Report containing the information described at 49 CFR 1155.25(b), 1105.7, and 1105.8, to the extent applicable, at least 45 days prior to filing an application. OEA may reject any report that it deems inadequate. The environmental and historic reporting requirements that would otherwise apply are waived, however, if the applicant or the Board hires a third-party consultant, OEA approves the scope of the consultant's work, and the consultant works under OEA's supervision to prepare an EIS or other environmental documentation. In such a case, the consultant acts on behalf of the Board, working under OEA's direction to collect the needed environmental information and compile it into an EIS or other appropriate environmental documentation. *See* 49 U.S.C. 10909(h); 49 CFR 1155.25(c).

§ 1155.21 Contents of application.

Applications for land-use-exemption permits for the facility, and any proposed future expansion within 10 years of the application date, shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, State, and United States Postal Service ZIP code.

(5) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated, the line of railroad serving the facility, the milepost location of the facility, and the milepost and names of the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Copies of the specific State, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption, any publicly available material providing the criteria for the application of the State, local, or municipal laws, regulations, orders, or other requirements affecting the siting, and a description of any action that the State, local, or municipal authority has taken affecting the siting of the facility. The applicant shall state whether each law, regulation, order or other requirement from which an exemption is sought is an environmental, public health, or public safety standard that falls under the traditional police powers of the State. If the applicant states that the requirement is not such a standard, it shall explain the reasons for its statement.

(8) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on Federal laws, regulations, orders, or other requirements.

(9) Certification that the facility complies with all State, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except for those from which it seeks exemption.

(10) Certification that the applicant has applied or will apply for the appropriate State permits not affecting siting.

(11) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(12) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable State under The Highlands Conservation Act, Public Law 108–421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located on any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable State under that law.

(13) An explanation of how the facility comes within the Board's jurisdiction under 49 U.S.C. 10501.

(14) The owner and operator of the facility.

(15) The interest of the rail carrier in the facility.

(16) An explanation of how the facility meets the definition of a solid waste rail transfer facility at 49 U.S.C. 10909(e)(1)(H).

(17) A statement whether the applicant has sought permission from the applicable State, local, or municipal authority with respect to some or all of the facility in its application and received an unsatisfactory result affecting the siting of the facility. The applicant shall provide information about the unsatisfactory result and shall include all relevant orders, decisions, or other notices of the denial.

(18) A detailed description of the operations and activities that will occur/are occurring at the facility.

(19) Detailed map showing the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(20) Detailed drawing of the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The drawing must

show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion planned for the next 10 years that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant believes would be relevant.

(21) A detailed justification for why any future expansion planned for the next 10 years should be covered by the land-use-exemption permit.

(b) *Statement.* A statement that sets forth, based on currently available information, the reasons why the Board should grant a land-use-exemption permit to the applicant under the standards in 49 U.S.C. 10909(c), (d) and these regulations. Specifically, the applicant shall include an explanation of whether the laws, regulations, or other requirements affecting siting of the facility from which exemption is sought, on their face or as applied, unreasonably burden the interstate transportation of solid waste by railroad or discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility, and, if so, why.

(c) *Environmental impact.* The applicant shall certify that it has submitted an environmental and/or historical report containing the information in 49 CFR 1155.25(b), 1105.7, and 1105.8, to the extent relevant, if an environmental and/or historic report is required.

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft Federal Register notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the **Federal Register** within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth in pt. 1155 Appendix B.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having knowledge of the facts and matters relied upon.

Verification

State of _____ ss.

County of _____

_____ (Name of affiant) makes oath and says that (s)he is the _____ (title of affiant) of the _____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in Finance Docket No. ____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me _____ in and for the State and County above named, this __ day of ____, 20__.

My commission expires

§ 1155.22 Filings and service of application.

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve concurrently, by first-class mail, a copy on the Governor of the State where the facility is located; the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the **Federal Register** by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) If the application is rejected, a revised application may be submitted and the Board will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted within 60 days of the order rejecting the incomplete or improper application need not be subject to new notice and publication under § 1155.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(3) The resubmission of a complete and properly filed land-use-exemption-permit application shall be considered a de novo filing for the purposes of computation of the time periods prescribed in the regulations contained in this part.

(4) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. When the petition is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the State where the facility is located; the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection.

§ 1155.23 Participation in application proceedings.

(a) *Initial comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing initial comments with the Board within 45 days of the filing of the

application. Comments should contain the following information, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning any organization or public interest it represents.

(3) Reasons, in general, why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c) and (d) and this part.

(4) Any rebuttal to the evidence and argument submitted by applicant.

(b) *Final comments.* Interested persons, including the applicant, within 30 days after the close of OEA's environmental review, may comment on how the information developed during OEA's environmental review concerning the considerations at 49 U.S.C. 10909(d)(1) through (5) should be weighed with the remaining transportation and other relevant considerations at 49 U.S.C. 10909(d)(6) and (7). The parties will have an additional 15 days to respond to other parties' arguments. All pleadings shall be limited to weighing the information developed during OEA's environmental review with transportation and other concerns, and should not be directed towards the adequacy of OEA's environmental review. (Interested persons may comment on the adequacy of OEA's environmental review during the normal comment period for the EIS as provided in 49 CFR 1105.10(a)(4). *See* 49 CFR 1155.24(a).) All comments under this paragraph shall contain the information required in paragraphs (a)(1) and (2) of this section.

(c) *Filing and service of comments and replies (including evidence and argument).* (1) Initial comments shall be filed with the Board (addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption-permit application. An original and 10 copies of each comment shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Final comments shall be filed and served on all parties within 30 days of the close of the environmental review. An original and 10 copies of such comments shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Replies to final comments shall be filed and served on all parties no later than 45 days after the close of the environmental review. An original and 10 copies of such replies shall be filed with the Board. A copy of each reply to comments shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

§ 1155.24 Environmental review.

(a) A land-use-exemption permit generally will require the preparation of an EIS. OEA may reclassify the environmental review requirements of land-use-exemption proceedings on a case-by-case basis, pursuant to 49 CFR 1105.6(d).

(b) An applicant for a land-use-exemption permit must submit an environmental report, at least 45 days prior to filing a land-use-exemption-permit application, containing the information described at 49 CFR 1105.7 to the extent applicable to solid waste rail transfer facilities. Applicants shall concurrently file an historic report containing the information at 49 CFR 1105.8 if applicable. The environmental report must also contain a discussion of the five factors for consideration listed at 49 U.S.C. 10909(d)(1) through (5) and address any associated environmental impacts as they relate to the facility for which a land-use-exemption permit is sought.

(c) The Board strongly encourages applicants to use third-party contractors to assist OEA in preparing the appropriate environmental documentation in land-use-exemption-permit proceedings. *See* 49 CFR 1105.10(d). The environmental reporting requirements outlined above that would otherwise apply are waived if an applicant hires a third-party contractor, OEA approves the scope of the contractor's work, and the contractor works under OEA's direct supervision. *See* 49 CFR 1105.10(d). If an applicant does not hire an independent third-party contractor, the Board may hire a third-party contractor and charge the costs for the contractor to the applicant. *See* 49 U.S.C. 10909(h).

(d) The Board's procedures set forth in 49 CFR 1105.10 for implementation of environmental laws are controlling unless superseded by provisions in this Part.

(e) An applicant for a land-use-exemption permit must follow the Board's procedures at 49 CFR 1105.9 for compliance with the Coastal Zone Management Act, 16 U.S.C. 1451–65, if that act is applicable.

§ 1155.25 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit may be transferred from a rail carrier to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) shall specifically advise the Board, the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, of the intended transfer. The **Federal Register** notice concerning the acquisition shall include a statement that a solid waste rail transfer facility with a Board-issued land-use-exemption permit is included in the acquisition.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in paragraph (a) of this section, the entity that received the land-use-exemption permit must notify the Board, the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the **Federal Register** that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

§ 1155.26 Board determinations under 49 U.S.C. 10909.

(a) *Schedule.* (1) The schedule in paragraph (a)(2) of this section shall govern the process for Board consideration and decisions in land-use-exemption-permit application proceedings from the time the application is filed until the time of the Board's decision on the merits.

(2) At least 45 days prior to filing of application—Environmental report (and/or historic report, if applicable) filed and environmental process initiated pursuant to 49 CFR 1155.24.

(i) Day 0—Application filed.

(ii) Day 20—Due date for Notice of Application to be published in the **Federal Register**.

(iii) Day 45—Due date for initial comments.

(iv) 30 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for final comments.

(v) 45 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for replies to final comments.

(3) A decision on the merits will be due 90 days after a full record is developed.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) The Board will reject an application from a person who is not a rail carrier, but is instead operating on behalf of a rail carrier unless:

(i) The applicant has sought permission from the applicable State, local, or municipal authority with respect to some or all of the property in the application and received an unsatisfactory result affecting the siting of the facility; or

(ii) The Governor of the State has petitioned the Board to require the facility to apply under 49 CFR part 1155 subpart B.

(5) The Board will issue a land-use-exemption permit to an applicant that has received an unsatisfactory result from a State, local or municipal authority affecting the siting of the facility only if it finds that the laws, regulations, or other requirements affect the siting of the facility, on their face or as applied, either:

(i) Unreasonably burden the interstate transportation of solid waste by railroad; or

(ii) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

(6) A land-use-exemption permit will not exempt a State requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the State unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.

(7) A land-use-exemption permit will only exempt State, local, or municipal laws, regulations, orders, other requirements, or portions thereof, affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* As required by 49 U.S.C. 10909(d), the Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and State law;

(4) Regional solid waste disposal plans developed pursuant to Federal or State law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) *Permits.* If the Board grants a land-use-exemption permit for a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. Inasmuch as the Board has discretion to require compliance with State requirements affecting the siting of a facility pursuant to 49 U.S.C. 10909(f), a Board-issued land-use-exemption permit will require compliance with such State laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit unless the Board determines otherwise.

§ 1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.

General rule. Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of Federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

APPENDIX A to Part 1155—Form Notice of Intent to Apply

Docket No. FD ____(Sub-No. ____)

Notice of Intent to apply for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, State, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a (name of rail carrier) line of railroad known as ____ at milepost ____ between (station name) at milepost ____ and (station name) at milepost ____.

The reason(s) for the proposed permit application is (are) _____ (explain briefly and clearly the activities undertaken, or proposed to be undertaken, by the applicant at the solid waste rail transfer facility. Describe the specific State and local laws, regulations, orders or other requirements affecting siting from which the applicant requests entire or partial exemption and any

action that the State, local, or municipal authority has taken affecting the siting of the facility. Also, if applicant is not the rail carrier, provide the name of the rail carrier that owns or operates the facility or has the facility operated on its behalf.)

(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (State) under The Highlands Conservation Act, Public Law 108–421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.21 will include the applicant's case for the granting of the land-use-exemption permit. Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board initial comments concerning the application within 45 days after the application is filed.

The party's initial comments should contain that party's initial arguments in support or opposition based on the information available at that point including the following, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.

(3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and the Board's regulations at 49 CFR 1155.27.

(4) If the applicant files under 49 CFR 1155.22, specific reasons why commenter supports or opposes the Board's accepting the application.

(5) Any rebuttal of material submitted by applicant.

The parties' initial comments will be considered by the Board in determining what disposition to make of the application. Parties seeking further information concerning the filing of comments should refer to 49 CFR 1155.24.

Interested persons also will have the opportunity to provide detailed comments during the Board's environmental review under the National Environmental Policy Act. 49 CFR 1105.10 and 49 CFR 1155.25. Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land use exemption permit. *See* 49 CFR part 1155 for details on these processes.

All comments should indicate the proceeding designation Docket No. FD ____ (Sub-No. ____). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. *See* 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board) and will be available on the Board's Web site at *http://www.stb.dot.gov*. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

APPENDIX B—Form Federal Register Notice

Docket No. FD ____ (Sub-No. ____)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, State, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of (name of rail carrier) railroad known as ____ at milepost ____ between (station name) at milepost ____ and (station name) at milepost ____. The application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (State) under The Highlands Conservation Act, Public Law 108–421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board initial comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of initial comments should refer to 49 CFR 1155.23.

All comments should indicate the proceeding designation Finance Docket No. ____ (Sub-No. ____). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, 10910 and the Board's implementing land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land use exemption permit. *See* 49 CFR part 1155 for details on these processes.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Solid Waste Rail Transfer Facilities.
OMB Control Number: ___–___.
STB Form Number: None.
Type of Review: New Collection.
Respondents: Any applicant seeking a land-use-exemption permit, whether compelled by a Governor's petition or through its own accord.
Number of Respondents: Unknown; none mandated by the Board.
Estimated Time Per Response: 160 hours.
Frequency: 1.
Total Burden Hours (annually including all respondents): 160 hours.
Total "Non-hour Burden" Cost: An estimated cost of $50,000 to hire an environmental consultant to work with Board staff on the required environmental report.
Needs and Uses: The information collected from applicants develops the record in land-use-exemption-permit proceedings, a process mandated by Congress in the CRA. The information gathered under the interim regulations is intended to permit the Board to accurately assess the merits of a permit application.
Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of 1 year and will be otherwise maintained permanently.

[FR Doc. 2011–6420 Filed 3–23–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA264

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 23, 2011, through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The king mackerel quota for the hook-and-line component of the commercial sector in the southern Florida west coast subzone is 520,312 lb (236,010 kg) (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined the commercial quota for Gulf group king mackerel in the southern Florida west coast subzone will be reached by March 23, 2011. Accordingly, the commercial sector for Gulf group king mackerel in the southern subzone is closed effective 12:01 a.m., local time, March 23, 2011, through June 30, 2011, the end of the fishing year.

From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone off Collier and Monroe Counties, Florida. This is the area south and west from 25°20.4′N. lat. (a line directly east from the Miami-Dade/Monroe County boundary on the east coast of Florida) to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County boundary on the west coast of Florida). Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48′ N. lat. and 26° 19.8′ N. lat.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6981 Filed 3–21–11; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 76, No. 57
Thursday, March 24, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2010–0135]

RIN 3150–AI85

ESBWR Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) proposes to amend its regulations to certify the Economic Simplified Boiling-Water Reactor (ESBWR) standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an ESBWR design may do so by referencing this design certification rule (DCR). The applicant for certification of the ESBWR design is GE–Hitachi Nuclear Energy (GEH). The public is invited to submit comments on this proposed DCR, the generic design control document (DCD) that would be incorporated by reference into the DCR, and the environmental assessment (EA) for the ESBWR design.

DATES: Submit comments on the DCR, DCD and/or EA by June 7, 2011. Submit comments specific to the information collections aspects of this rule by April 25, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID NRC–2010–0135 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0135. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.
- *Hand Deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (telephone: 301–415–1966).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: George M. Tartal, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0016; e-mail: *george.tartal@nrc.gov;* or Bruce M. Bavol, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6715; e-mail: *bruce.bavol@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Submitting Comments and Accessing Information
II. Background
III. Regulatory and Policy Issues
IV. Technical Evaluation of the ESBWR
V. Section-by-Section Analysis
  A. Introduction (Section I)
  B. Definitions (Section II)
  C. Scope and Contents (Section III)
  D. Additional Requirements and Restrictions (Section IV)
  E. Applicable Regulations (Section V)
  F. Issue Resolution (Section VI)
  G. Duration of This Appendix (Section VII)
  H. Processes for Changes and Departures (Section VIII)
  I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) (Section IX)
  J. Records and Reporting (Section X)
VI. Agreement State Compatibility
VII. Availability of Documents
VIII. Procedures for Access to Proprietary Information, Sensitive Unclassified Non-Safeguards Information (Including Proprietary Information) and Safeguards Information for Preparation of Comments on the Proposed ESBWR Design Certification Rule
IX. Plain Language
X. Voluntary Consensus Standards
XI. Finding of No Significant Environmental Impact: Availability
XII. Paperwork Reduction Act Statement
XIII. Regulatory Analysis
XIV. Regulatory Flexibility Certification
XV. Backfitting

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Documents that are not publicly available because they are considered to be either Sensitive Unclassified Non-Safeguards Information (SUNSI) (including SUNSI constituting "proprietary information" [1]) or Safeguards Information (SGI) may be available to interested persons who may wish to comment on the proposed design certification. Such persons shall follow the procedures described in the Supplementary Information section of this notice, under the heading, "VIII. Procedures for Access to SUNSI (Including Proprietary information) and Safeguards Information for Preparation of Comments on the Proposed ESBWR Design Certification Rule."

You can access publicly available documents related to this document, including the following documents, using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555

[1] For purposes of this discussion, "proprietary information" constitutes trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act (FOIA) and the NRC's implementing regulation at Title 10 of the Code of Federal Regulations (10 CFR), part 9.

Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0135.

II. Background

Subpart B to 10 CFR part 52 sets forth the process for obtaining standard design certifications. On August 24, 2005 (70 FR 56745), GEH tendered its application for certification of the ESBWR standard plant design with the NRC. The GEH submitted this application in accordance with Subpart B of 10 CFR part 52. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–010) on December 1, 2005 (70 FR 73311). The pre-application information submitted before the NRC formally accepted the application can be found in ADAMS under Docket No. PROJ0717 (Project No. 717).

The application for design certification of the ESBWR design has been referenced in the following combined license (COL) application as of the date of this document:

Detroit Edison Company, Fermi Unit 3, Docket No. 52–033 (73 FR 73350; December 2, 2008).

III. Regulatory and Policy Issues

Human Factors Operational Programs

The NRC is implementing existing Commission policy, that operational programs should be excluded from finality except where necessary to find design elements acceptable, in a manner different from other existing design certification rules. This policy is described in the December 6, 1996, staff requirements memorandum (SRM) to SECY–96–077, "Certification of Two Evolutionary Designs," dated April 15, 1996. The NRC proposes to exclude the two Human Factors Engineering (HFE) operational program elements in Chapter 18 of the ESBWR DCD from the scope of the design approved in the rule. There are 12 elements in the HFE program. Two of the elements concern operational programs (procedures and training) that are not used to assess the adequacy of the HFE design. However, the GEH description of these two HFE operational programs addresses existing NRC guidelines in NUREG–0711, Revision 2, "Human Factors Engineering Program Review Model," which are comprehensive, and go beyond the operational program information needed as input to the HFE design. In addition, the training and procedure elements included in the HFE program are redundant to what is reviewed as part of the operational programs described in Chapter 13 of the Standard Review Plan (NUREG–0800). Accordingly, the NRC is revising the HFE regulatory guidance in NUREG–0711 to address this overlap, but the revised guidance is not expected to be completed until late 2011. In keeping with the established Commission policy of not approving operational program elements through design certification except where necessary to find design elements acceptable, the NRC proposes to exclude the two HFE operational program elements in the ESBWR DCD from the scope of the design approved in the rule. This would be done explicitly in Section VI, Issue Resolution, of the rule, by excluding the two HFE operational program elements from the finality accorded to the design. This exclusion would be unique to the ESBWR design because all other DCDs for the previously certified designs do not include operational program descriptions of HFE training and procedures and the respective DCRs did not include specific exclusions from finality for it.

Access to SUNSI and SGI in Connection With License Applications

In the four currently approved design certifications (10 CFR part 52, Appendices A through D), paragraph VI.E sets forth specific directions on how to obtain access to proprietary information and SGI on the design certification in connection with a license application proceeding referencing that design certification rule. These provisions were developed before the events of September 11, 2001. After September 11, 2001, Congress has changed the statutory requirements governing access to SGI, and the NRC has revised its rules, procedures, and practices governing control of and access to SUNSI and SGI. The NRC now believes that generic direction on obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph VI.E of the four currently approved DCRs should not be included in the design certification rule for the ESBWR. Instead, the NRC should specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the ESBWR DCR. The NRC intends to include this change in any future amendment or renewal of the existing DCRs. However, the NRC is not planning to initiate rulemaking to change paragraph VI.E of the existing DCRs, in order to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

IV. Technical Evaluation of the ESBWR

The NRC issued a final safety evaluation report (FSER) for the ESBWR design in March 2011. The FSER provides the basis for issuance of a design certification under Subpart B to 10 CFR part 52 and a final design approval under Subpart E to 10 CFR part 52. The GEH has requested the NRC provide its design approval for the ESBWR design under Subpart E. The final design approval for the ESBWR design will be issued before publication of a final rule.

The significant technical issues that were resolved during the review of the ESBWR design are the regulatory treatment of non-safety systems (RTNSS), containment performance, control room cooling, steam dryer methodology, feedwater temperature (FWT) domain, aircraft impact assessment and the use of Code Case N–782.

Regulatory Treatment of Non-Safety Systems

The ESBWR relies on passive systems to perform safety functions credited in the design basis for 72 hours following an initiating event. After 72 hours, non-safety systems, either passive or active, replenish the passive systems in order to keep them operating or perform post-accident recovery functions directly. The ESBWR design also uses nonsafety-related active systems to provide defense-in-depth capabilities for key safety functions provided by passive systems. The challenge during the review was to identify the non-safety systems, structures and components (SSCs) that should receive enhanced regulatory treatment and to identify the appropriate regulatory treatment to be applied to these SSCs. Such SSCs are denoted as "RTNS SSCs." As a result of

the NRC's review, the applicant added Appendix 19A to the DCD to identify the nonsafety systems that perform these post-72 hour or defense-in-depth functions and the basis for their selection. The applicant's selection process was based on the guidance in SECY–94–084, "Policy and Technical Issues Associated with the Regulatory Treatment of Non-Safety Systems in Passive Plant Designs."

To provide reasonable assurance that RTNSS SSCs will be available if called upon to function, the applicant established availability controls in DCD Tier 2, Appendix 19ACM, and Technical Specifications (TS) in DCD Tier 2, Chapter 16, when required by 10 CFR 50.36. The applicant also included all RTNSS SSCs in the reliability assurance program described in Chapter 17 of DCD Tier 2 and applied augmented design standards as described in DCD Tier 2, Section 19A.8.3. The NRC finds the applicant's implementation of the RTNSS process described in the DCD acceptable.

Containment Performance

The passive containment cooling system (PCCS) maintains the containment within its design pressure and temperature limits for design-basis accidents. The system is passive and does not rely upon moving components or external power for initiation or operation for 72 hours following a loss-of-coolant accident (LOCA). The PCCS and its design basis are described in detail in Section 6.2.2 of the DCD Tier 2. The NRC identified a concern regarding the PCCS long-term cooling capability for the period from 72 hours to 30 days following a LOCA. To address this concern, the applicant proposed additional design features credited after 72 hours to reduce the long-term containment pressure. The features are the PCCS vent fans and passive autocatalytic recombiners as described in DCD Tier 2, Section 6.2.1. These SSCs have been indentified in DCD Appendix 19A as RTNSS SSCs.

The applicant provided calculation results to demonstrate that the long-term containment pressure would be acceptable and that the design complies with general design criterion (GDC) 38. The NRC's independent calculations confirmed the applicant's conclusion and the NRC accepts the proposed design and licensing basis. The NRC also raised a concern regarding the potential accumulation of high concentrations of hydrogen and oxygen in the PCCS and isolation condenser system (ICS), which could lead to combustion following a LOCA. The applicant modified the design of the PCCS and ICS heat exchangers to withstand potential hydrogen detonations. The NRC concludes that the design changes to the PCCS and ICS are acceptable and meet the applicable requirements.

Control Room Cooling

The ESBWR primarily relies on the mass and structure of the control building to maintain acceptable temperatures for human and equipment performance for up to 72 hours on loss of normal cooling. The NRC had not previously approved this approach for maintaining acceptable temperatures in the control building. The applicant proposed acceptance criteria for the evaluation of the control building structure's thermal performance based on industry and NRC guidelines. The applicant incorporates by reference an analysis of the control building structure's thermal performance as described in Tier 2, Sections 3H, 6.4, and 9.4. The applicant also proposed ITAAC to confirm that an updated analysis of the as-built structure continues to meet the thermal performance acceptance criteria. The NRC finds that the applicant's acceptance criteria are consistent with the advanced light-water reactor control room envelope atmosphere temperature limits in NUREG–1242, "NRC Review of Electric Power Research Institute's Advanced Light Water Reactor Utility Requirements Document," and the use of the wet bulb globe temperature index in evaluation of heat stress conditions as described in NUREG–0700, "Human-System Interface Design Review Guidelines." The NRC finds the control building structure thermal performance analysis and ITAAC acceptable based on the analysis using bounding environmental assumptions which will be confirmed by the ITAAC. Accordingly, the NRC finds that the acceptance criteria, control building structure thermal performance analysis, and the ITAAC, provide reasonable assurance that acceptable temperatures will be maintained in the control building for 72 hours. Therefore, the NRC finds that the control building design in regard to thermal performance conforms to the guidelines of Standard Review Plan Section 6.4 and complies with the requirements of the general design criteria of 10 CFR part 50, Appendix A, GDC 19.

Feedwater Temperature Operating Domain

In operating boiling-water reactors the recirculation pumps are used in combination with the control rods to control and maneuver reactor power level during normal power operation. The ESBWR design is unique in that the core is cooled by natural circulation during normal operation, and there are no recirculation pumps. In Chapter 15 of the DCD, GEH references the licensing topical report (LTR) NEDO–33338, Revision 1, "ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis." This LTR describes a broadening of the ESBWR operating domain, which allows for increased flexibility of operation by adjusting the FWT. This increased flexibility accommodates the so-called "soft" operating practices, which reduce the duty (mechanical stress) to the fuel and minimize the probability of pellet-clad interactions and associated fuel failures.

By adjusting the FWT, the operator can control the reactor power level without control blade motion and with minimum impact on the fuel duty. Control blade maneuvering can also be performed at lower power levels.

To control the FWT, the ESBWR design includes a seventh feedwater heater with high-pressure steam. FWT is controlled by either manipulating the main steam flow to the No. 7 feedwater heater to increase FWT above the temperature normally provided by the feedwater heaters with turbine extraction steam (normal FWT) or by directing a portion of the feedwater flow around the high-pressure feedwater heaters to decrease FWT below the normal FWT. An increase in FWT decreases reactor power, and a decrease in FWT increases reactor power. The applicant provided analyses that demonstrated ample margin to acceptance criteria. The NRC concludes that the applicant has adequately accounted for the effects of the proposed FWT operating domain extension on the nuclear design. Further, the applicant has demonstrated that the fuel design limits will not be exceeded during normal or anticipated operational transients and that the effects of postulated transients and accidents will not impair the capability to cool the core. Based on this evaluation, the NRC concludes that the nuclear design of the fuel assemblies, control systems, and reactor core will continue to meet the applicable regulatory requirements.

Steam Dryer Design Methodology

As a result of reactor pressure vessel (RPV) steam dryer issues at operating BWRs, the NRC issued revised guidance concerning the evaluation of steam dryers. The guidance requested analysis to show that the dryer will maintain its structural integrity during plant operation in spite of or in the face of

acoustic and hydrodynamic fluctuating pressure loads. This demonstration of RPV steam dryer structural integrity consists of three steps:

(1) Predict the fluctuating pressure loads on the dryer,

(2) Use these fluctuating pressure loads in a structural analysis to qualify the steam dryer design, and

(3) Implement a startup test program for confirming the steam dryer design analysis results during the initial plant power ascension testing.

The Plant Based Load Evaluation (PBLE) methodology is an analytical tool developed by GEH to predict fluctuating pressure loads on the steam dryer. Section 3.9.5 of the DCD references the GEH LTR NEDE–33313P, "ESBWR Steam Dryer Structural Evaluation," which references LTR NEDE–33312P, "ESBWR Steam Dryer Acoustic Load Definition," which references the PBLE load definition method. The PBLE method is described in LTR NEDC–33408P, "ESBWR Steam Dryer-Plant Base Load Evaluation Methodology." This LTR provides the theoretical basis for determining the fluctuating loads on the ESBWR steam dryer, describes the PBLE analytical model, determines the biases and uncertainties of the PBLE formulation, and describes the application of the PBLE method to the evaluation of the ESBWR steam dryer.

The NRC's review of the PBLE methodology concludes that it is technically sound and provides a conservative analytical approach for definition of flow-induced acoustic pressure loading on the ESBWR steam dryer. The application of the PBLE load definition process together with the design criteria from the American Society of Mechanical Engineers (ASME) Code, Section III, Article NG–3000 in combination with the proposed start up test program provide assurance of the structural integrity of the steam dryer. Implementation of the analytical, design, and testing methodology for the ESBWR steam dryer demonstrate conformance with the general design criteria of 10 CFR part 50, Appendix A, GDCs 1, 2, and 4.

Aircraft Impact Assessment

Under 10 CFR 50.150, which became effective on July 13, 2009, designers of new nuclear power reactors are required to perform an assessment of the effects on the designed facility of the impact of a large, commercial aircraft. An applicant for a new design certification rule is required to submit a description of the design features and functional capabilities identified as a result of the assessment (key design features) in its DCD together with a description of how the identified design features and functional capabilities show that the acceptance criteria in 10 CFR 50.150(a)(1) are met.

To address the requirements of 10 CFR 50.150, GEH completed an assessment of the effects on the designed facility of the impact of a large, commercial aircraft. The GEH also added Appendix 19D to DCD Tier 2 to describe the design features and functional capabilities of the ESBWR identified as a result of the assessment that ensure the reactor core remains cooled and the spent fuel pool integrity is maintained.

The NRC finds that the applicant has performed an aircraft impact assessment using NRC-endorsed methodology that is reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the acceptance criteria in 10 CFR 50.150(a)(1) are met. The NRC finds that the applicant adequately describes the key design features and functional capabilities credited to meet 10 CFR 50.150, including descriptions of how the key design features and functional capabilities show that the acceptance criteria in 10 CFR 50.150(a)(1) are met. Therefore, the NRC finds that the applicant meets the applicable requirements of 10 CFR 50.150(b).

Code Case N–782

Under 10 CFR 50.55a(a)(3), GEH requested NRC approval for the use of Code Case N–782 as a proposed alternative to the rules of Section III Subsection NCA–1140 regarding applied Code Editions and Addenda required by 10 CFR 50.55a(c), (d), and (e). Code Case N–782 provides that the Code Edition and Addenda endorsed in a certified design or licensed by the regulatory authority may be used for systems and components subject to ASME Code, Section III requirements. These alternative requirements are in lieu of the requirements that base the Edition and Addenda on the date of the COL or manufacturing license, or the application for a construction permit, standard design approval, or standard design certification. Reference to Code Case N–782 will be included in component and system design specifications and design reports to permit certification of these specifications and reports to the Code Edition and Addenda cited in the DCD. The NRC's bases for approving the use of Code Case N–782 as a proposed alternative to the requirements of Section III Subsection NCA–1140 under 10 CFR 50.55a(a)(3) for the ESBWR are described in Section 5.2.1.1.3 of the FSER.

Exemptions

The NRC is proposing to approve an exemption from 10 CFR 50.34(f)(2)(iv) as it relates to the safety parameter display system. This provision requires an applicant to provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, capable of displaying a full range of important plant parameters and data trends on demand and indicating when process limits are being approached or exceeded. The ESBWR design integrates the safety parameter display system into the design of the non-safety related distribution control and information system, rather than use a stand-alone console. The NRC's bases for providing the exemption are described in Section 18.8.3.2 of the FSER.

V. Section-by-Section Analysis

The following discussion sets forth the purpose and key aspects of each section and paragraph of the proposed ESBWR DCR. All section and paragraph references are to the provisions in the proposed Appendix E to 10 CFR part 52 unless otherwise noted. The NRC has modeled the ESBWR DCR on the existing DCRs, with certain modifications where necessary to account for differences in the ESBWR design documentation, design features, and EA (including severe accident mitigation design alternatives (SAMDAs)). As a result, the DCRs are standardized to the extent practical.

A. Introduction (Section I)

The purpose of Section I of proposed Appendix E to 10 CFR part 52 (this appendix) is to identify the standard plant design that would be approved by this DCR and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant vendor, then the COL applicant must meet the requirements in 10 CFR 52.73. The COL applicant must demonstrate that the alternate supplier is qualified to provide the standard plant design information.

Second, paragraph X.A.1 would require the design certification applicant to maintain the generic DCD throughout the time this appendix may be referenced. Thus, it is necessary to identify the entity to which the requirement in paragraph X.A.1 applies.

B. Definitions (Section II)

During development of the first two DCRs, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant and licensee that reference this appendix. This distinction is necessary in order to specify the relevant plant-specific requirements to applicants and licensees referencing the appendix. In order to facilitate the maintenance of the master DCDs, the NRC proposes that each application for a standard design certification be updated to include an electronic copy of the final version of the DCD. The final version would be required to incorporate all amendments to the DCD submitted since the original application as well as any changes directed by the NRC as a result of its review of the original DCD or as a result of public comments. This final version would become the master DCD incorporated by reference in the DCR. The master DCD would be revised as needed to include generic changes to the version of the DCD approved in this design certification rulemaking. These changes would occur as the result of generic rulemaking by the Commission, under the change criteria in Section VIII.

The Commission would also require each applicant and licensee referencing this appendix to submit and maintain a plant-specific DCD as part of the COL Final Safety Analysis Report (FSAR). This plant-specific DCD would include or incorporate by reference the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in Section VIII. Thus, the plant-specific DCD would function like an updated FSAR because it would provide the most complete and accurate information on a plant's design basis for that part of the plant within the scope of this appendix. Therefore, this appendix would define both a generic DCD and a plant-specific DCD.

Also, the Commission decided to treat the TS in Chapter 16 of the generic DCD as a special category of information and to designate them as generic TS in order to facilitate the special treatment of this information under this appendix. A COL applicant must submit plant-specific TS that consist of the generic TS, which may be modified under paragraph VIII.C, and the remaining plant-specific information needed to complete the TS. The FSAR that is required by 10 CFR 52.79 will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific TS.

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. Therefore, appropriate definitions for these additional terms are included in this appendix. The nuclear industry representatives requested a two-tiered structure for the DCRs to achieve issue preclusion for a greater amount of information than was originally planned for the DCRs, while retaining flexibility for design implementation. The Commission approved the use of a two-tiered rule structure in its SRM, dated February 14, 1991, on SECY–90–377, "Requirements for Design Certification under 10 CFR Part 52," dated November 8, 1990. This document and others are available in the Regulatory History of Design Certification (*see* Section VII of this document).

The Tier 1 portion of the design-related information contained in the DCD would be *certified* by this appendix and, therefore, subject to the special backfit provisions in paragraph VIII.A. An applicant who references this appendix would be required to include or incorporate by reference and comply with Tier 1, under paragraphs III.B and IV.A.1. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding ITAAC, significant interface requirements, and significant site parameters for the design (refer to Section C.I.1.8 of Regulatory Guide 1.206 for guidance on significant interface requirements and site parameters). The design descriptions, interface requirements, and site parameters in Tier 1 were derived from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in Section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with Section VIII.A.

The Tier 1 design descriptions serve as requirements for the lifetime of a facility license referencing the design certification. The inspection, test, analysis, and acceptance criterion/criteria (ITAAC) verify that the as-built facility conforms to the approved design and applicable regulations. Under 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before authorizing operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility within the scope of the design certification must comply with the design descriptions in the plant-specific DCD unless changes are made under the change process in Section VIII. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design. Tier 1 interface requirements must be met by the site-specific design features of a facility that references this appendix. An application that references this appendix must demonstrate that the site characteristics at the proposed site fall within the site parameters (both Tier 1 and Tier 2) (refer to paragraph IV.D of this document).

Tier 2 is the portion of the design-related information contained in the DCD that would be *approved* by this appendix but not certified. Tier 2 information would be subject to the backfit provisions in paragraph VIII.B. Tier 2 includes the information required by 10 CFR 52.47(a) and 52.47(c) (with the exception of generic TS and conceptual design information) and the supporting information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, paragraphs III.B and IV.A.1 would require an applicant who references this appendix to include or incorporate by reference Tier 2 and to comply with Tier 2, except for the COL action items, including the availability controls in Appendix 19ACM of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved sufficient method for meeting Tier 1 requirements. However,

there may be other acceptable ways of complying with Tier 1 requirements. The appropriate criteria for departing from Tier 2 information would be specified in paragraph VIII.B. Departures from Tier 2 information would not negate the requirement in paragraph III.B to incorporate by reference Tier 2 information.

A definition of "combined license action items" (COL information), which is part of the Tier 2 information, would be added to clarify that COL applicants who reference this appendix are required to address COL action items in their license application. However, the COL action items are not the only acceptable set of information. An applicant may depart from or omit COL action items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items would not be requirements for the licensee unless they are restated in the FSAR. For additional discussion, *see* Section IV.D of this document.

The availability controls, which are set forth in Appendix 19ACM of the generic DCD, would be added to the information that is part of Tier 2 to clarify that the availability controls are not operational requirements for the purposes of paragraph VIII.C. Rather, the availability controls are associated with specific design features. The availability controls may be changed if the associated design feature is changed under paragraph VIII.B. For additional discussion, *see* Section IV.C of this document.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as "Tier 2*" information and, as discussed in greater detail in the section-by-section analysis for Section H, a plant-specific departure from Tier 2* information would require prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in paragraph VIII.B.6. Some Tier 2* requirements concerning special preoperational tests are designated to be performed only for the first plant or first three plants referencing the ESBWR DCR. The Tier 2* designation for these selected tests would expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant.

The regulations at 10 CFR 50.59 set forth thresholds for permitting changes to a plant as described in the FSAR without NRC approval. Inasmuch as 10 CFR 50.59 is the primary change mechanism for operating nuclear plants, the Commission believes that future plants referencing the ESBWR DCR should use thresholds as close to 10 CFR 50.59 as is practicable and appropriate for new reactors. Because of some differences in how the change control requirements are structured in the DCRs, certain definitions contained in 10 CFR 50.59 are not applicable to 10 CFR part 52 and are not being included in this proposed rule. The Commission is including a definition for a "departure from a method of evaluation" (paragraph II.G), which is appropriate to include in this rulemaking so that the eight criteria in paragraph VIII.B.5.b will be implemented for new reactors as intended.

C. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph III.A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic TS into this appendix. Paragraph III.B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the Code of Federal Regulations. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic TS, have been combined into a single document called the generic DCD, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 1 CFR part 51. One of the requirements of the OFR for incorporation by reference is that the design certification applicant must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A would identify a GEH representative to be contacted in order to obtain a copy of the generic DCD.

Paragraphs III.A and III.B would also identify the availability controls in Appendix 19ACM of the generic DCD as part of the Tier 2 information. During its review of the ESBWR design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of non-safety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, GEH developed administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. The GEH named these additional controls "availability controls." The Commission included this characterization in Section III to ensure that these availability controls would be binding on applicants and licensees that reference this appendix and would be enforceable by the NRC. The NRC's evaluation of the availability controls is provided in Chapter 22 of the FSER.

The generic DCD (master copy) for this design certification is electronically accessible under ADAMS Accession No. ML103440266; at the OFR; and at *http://www.regulations.gov* by searching under Docket ID NRC–2010–0135. Copies of the generic DCD would also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification applicant makes a generic change (rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The Commission would require that the design certification applicant maintain an up-to-date copy of the master DCD that includes any generic changes it has made under paragraph X.A.1 because it is likely that most applicants intending to reference the standard design would obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD would be maintained by the applicant or licensee that references this appendix in a plant-specific DCD under paragraph X.A.2.

In addition to requiring compliance with this appendix, paragraph III.B would clarify that the conceptual design information and GEH's evaluation of SAMDAs are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are contained in

Tier 2 information. As provided by 10 CFR 52.47(a)(24), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant would not be required to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8.2 of Tier 2 identifies the location of the conceptual design information. The GEH's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The Commission's assessment of this information is discussed in Section X of this document.

Paragraphs III.C and III.D would set forth the way potential conflicts are to be resolved. Paragraph III.C would establish the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph III.D would establish the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design.

Paragraph III.E would clarify that design activities that are wholly outside the scope of this design certification may be performed using actual site characteristics, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision would apply to site-specific portions of the plant, such as the administration building. Because this statement is not a definition, this provision has been located in Section III.

D. Additional Requirements and Restrictions (Section IV)

Section IV would set forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A would set forth the information requirements for these applicants. This paragraph would distinguish between information and/or documents which must actually be *included* in the application or the DCD, versus those which may be *incorporated by reference* (*i.e.,* referenced in the application as if the information or documents were included in the application). Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated.

Paragraph IV.A.1 would require an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such an incorporation by reference is that this appendix would be legally binding on the applicant or licensee. Paragraph IV.A.2.a would require that a plant-specific DCD be included in the initial application to ensure that the applicant commits to complying with the DCD. This paragraph would also require the plant-specific DCD to either include or incorporate by reference the generic DCD information. Further, this paragraph would also require the plant-specific DCD to use the same format as the generic DCD and reflect the applicant's proposed exemptions and departures from the generic DCD as of the time of submission of the application. The plant-specific DCD would be part of the plant's FSAR, along with information for the portions of the plant outside the scope of the referenced design. Paragraph IV.A.2.a would also require that the initial application include the reports on departures and exemptions as of the time of submission of the application.

Paragraph IV.A.2.b would require that an application referencing this appendix include the reports required by paragraph X.B for exemptions and departures proposed by the applicant as of the date of submission of its application. Paragraph IV.A.2.c would require submission of plant-specific TS for the plant that consists of the generic TS from Chapter 16 of the DCD, with any changes made under paragraph VIII.C, and the TS for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic TS, such as bracketed values (refer to guidance provided in Interim Staff Guidance DC/COL–ISG–8, "Necessary Content of Plant-Specific Technical Specifications").

Paragraph IV.A.2.d would require the applicant referencing this appendix to provide information demonstrating that the proposed site characteristics fall within the site parameters for this appendix and that the plant-specific interface requirements have been met as required by 10 CFR 52.79(d). If the proposed site has a characteristic that does not fall within one or more of the site parameters in the DCD, then the proposed site would be unacceptable for this design unless the applicant seeks an exemption under Section VIII and provides adequate justification for locating the certified design on the proposed site. Paragraph IV.A.2.e would require submission of information addressing COL action items, identified in the generic DCD as COL information in the application. The COL information identifies matters that need to be addressed by an applicant who references this appendix, as required by Subpart C of 10 CFR part 52. An applicant may differ from or omit these items, provided that the difference or omission is identified and justified in its application. Based on the applicant's difference or omission, the NRC may impose additional licensing requirement(s) on the COL applicant as appropriate. Paragraph IV.A.2.f would require that the application include the information specified by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed or operational issues not addressed by a design certification, in whole or in part, by an applicant that references this appendix. Paragraph IV.A.3 would require the applicant to physically include, not simply reference, the SUNSI (including proprietary information) and SGI referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements.

Paragraph IV.A.4 would indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph IV.A.4 would require that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GEH Nuclear Energy is qualified to supply the ESBWR certified design unless GEH Nuclear Energy supplies the design for the applicant's use. In cases where a COL applicant is not using GEH Nuclear Energy to supply the ESBWR certified design, the required information would be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design.

Paragraph IV.B would reserve to the Commission the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design

certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous DCRs were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was promulgated. The Commission's concern is with the way ITAAC were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate that the Commission retain some discretion regarding the way this appendix could be referenced in a 10 CFR part 50 licensing proceeding.

E. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations that would be applicable and in effect at the time this proposed design certification is approved (*i.e.,* as of the date specified in paragraph V.A, which would be the date that this appendix is approved by the Commission and signed by the Secretary of the Commission). These regulations would consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that would not be applicable to this certified design.

In paragraph V.B, the Commission would identify the regulations that do not apply to the ESBWR design. The Commission has determined that the ESBWR design should be exempt from portions of 10 CFR 50.34 as described in the FSER (NUREG–XXXX) and/or summarized below:

(1) Paragraph (f)(2)(iv) of 10 CFR 50.34—Contents of Construction Permit and Operating License Applications: Technical Information

This paragraph requires an applicant to provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, capable of displaying a full range of important plant parameters and data trends on demand, and capable of indicating when process limits are being approached or exceeded. The ESBWR design integrates the safety parameter display system into the design of the non-safety related distribution control and information system, rather than use a stand-alone console. The safety parameter display system is described in Section 7.1.5 of the DCD.

The Commission has also determined that the ESBWR design is approved to use the following alternative. Under 10 CFR 50.55a(a)(3), GEH requested NRC approval for the use of Code Case N–782 as a proposed alternative to the rules of Section III, Subsection NCA–1140, regarding applied Code Editions and Addenda required by 10 CFR 50.55a(c), (d), and (e). Code Case N–782 provides that the Code Edition and Addenda endorsed in a certified design or licensed by the regulatory authority may be used for systems and components constructed to ASME Code, Section III requirements. These alternative requirements are in lieu of the requirements that base the Edition and Addenda on the construction permit date. Reference to Code Case N–782 will be included in component and system design specifications and design reports to permit certification of these specifications and reports to the Code Edition and Addenda cited in the DCD. The NRC's bases for approving the use of Code Case N–782 as a proposed alternative to the requirements of Section III Subsection NCA–1140 under 10 CFR 50.55a(a)(3) for ESBWR are described in Section 5.2.1.1.3 of the FSER.

F. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that would be resolved by the Commission in this rulemaking and, therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(5). The section is divided into five parts: paragraph A identifies the Commission's safety findings in adopting this appendix, paragraph B identifies the scope and nature of issues which are resolved by this rulemaking, paragraph C identifies issues which are not resolved by this rulemaking, paragraph D identifies the backfit restrictions applicable to the Commission with respect to this appendix, and paragraph E identifies the availability of secondary references.

Paragraph VI.A would describe the nature of the Commission's findings in general terms and make the findings required by 10 CFR 52.54 for the Commission's approval of this DCR. Furthermore, paragraph VI.A would explicitly state the Commission's determination that this design provides adequate protection of the public health and safety.

Paragraph VI.B would set forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph VI.B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph VI.B describes the categories of information for which there is issue resolution. Specifically, paragraph VI.B.1 would provide that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–XXXX), the Tier 1 and Tier 2 information (including the availability controls in Appendix 19ACM of the generic DCD), and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(5). These resolved issues include the information referenced in the DCD that are requirements (*i.e.,* "secondary references"), as well as all issues arising from proprietary information and SGI that are intended to be requirements, but does not include the HFE processes for procedure development and training program development identified in Sections 18.9 and 18.10 of the generic DCD.

Paragraph VI.B.2 would provide for issue preclusion of SUNSI (including proprietary information) and SGI. Paragraphs VI.B.3, VI.B.4, VI.B.5, and VI.B.6 would clarify that approved changes to and departures from the DCD, which are accomplished in compliance with the relevant procedures and criteria in Section VIII, continue to be matters resolved in connection with this rulemaking. Paragraphs VI.B.4, VI.B.5, and VI.B.6, which would characterize the scope of issue resolution in three situations, use the phrase "but only for that plant." Paragraph VI.B.4 would describe how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph VI.B.5 would describe how issues are resolved when a plant referencing the DC rule obtains a license amendment for a departure from Tier 2 information. Paragraph VI.B.6 would describe how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which would waive the requirement for NRC approval. In all three situations, after a matter (*e.g.,* an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a design certification rule, the adequacy of that matter *for that plant* is resolved and would constitute part of the licensing basis for that plant. Therefore, that matter would not ordinarily be subject to challenge in any subsequent proceeding or action for that plant (*e.g.,* an enforcement action) listed in the introductory portion of paragraph IV.B. By contrast, there would be no legally binding issue resolution on that subject matter *for any other plant,* or in

a subsequent rulemaking amending the applicable design certification rule. However, the NRC's consideration of the safety, regulatory or policy issues necessary to the determination of the exemption or license amendment may, in appropriate circumstances, be relied upon as part of the basis for NRC action in other licensing proceedings or rulemaking.

Paragraph VI.B.7 would provide that, for those plants located on sites whose site characteristics fall within the site parameters assumed in the GEH evaluation of SAMDAs, all issues with respect to SAMDAs arising under the National Environmental Policy Act of 1969, as amended (NEPA), associated with the information in the EA for this design and the information regarding SAMDAs in NEDO–33306, Revision 4, "ESBWR Severe Accident Mitigation Design Alternatives" are also resolved within the meaning and intent of 10 CFR 52.63(a)(5). If a deviation from a site parameter is granted, the deviation applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site characteristics; but, if the deviation is approved, requests for litigation at the COL stage must meet the requirements of 10 CFR 2.309 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter deviation.

Paragraph VI.C would reserve the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision would reflect the fact that only some operational requirements, including portions of the generic TS in Chapter 16 of the DCD, and no operational programs, such as operational QA, were completely or comprehensively reviewed by the NRC in this design certification rulemaking proceeding. Therefore, the special backfit and finality provisions of 10 CFR 52.63 would apply only to those operational requirements that either the NRC completely reviewed and approved, or formed the basis for an NRC safety finding of the adequacy of the ESBWR, as documented in the NRC's safety evaluation report for the ESBWR. This is consistent with the currently approved design certifications in 10 CFR part 52, Appendices A through D. Although information on operational matters is included in the DCDs of each of these currently approved designs, for the most part these design certifications do not provide approval for operational information, and none provide approval for operational "programs" (*e.g.,* emergency preparedness programs, operational quality assurance programs). Most operational information in the DCD simply serves as "contextual information" (*i.e.,* information necessary to understand the design of certain SSCs and how they would be used in the overall context of the facility). The NRC did not use contextual information to support the NRC's safety conclusions, and such information does not constitute the underlying safety bases for the adequacy of those SSCs. Thus, contextual operational information on any particular topic would not constitute one of the "matters resolved" under paragraph VI.B.

The NRC notes that operational requirements may be imposed on licensees referencing this design certification through the inclusion of license conditions in the license, or inclusion of a description of the operational requirement in the plant-specific FSAR.[2] The NRC's choice of the regulatory vehicle for imposing the operational requirements will depend upon, among other things: (1) Whether the development and/or implementation of these requirements must occur prior to either the issuance of the COL or the Commission finding under 10 CFR 52.103(g), and (2) the nature of the change controls which the NRC believes are appropriate given the regulatory, safety, and security significance of each operational requirement.

Paragraph VI.C would allow the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification (*e.g.,* start-up and power ascension testing), are not restricted by 10 CFR 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed during a COL review. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving in this rule the right to impose, at the time of COL issuance, license conditions addressing post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph VI.D would reiterate the restrictions (contained in Section VIII) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems, or components, design features, design criteria, and ITAAC (paragraph VI.D.3 would address ITAAC) within the scope of the certified design.

Paragraph VI.E would provide that the NRC will specify at an appropriate time the procedures for interested persons to obtain access to proprietary information, SUNSI, and SGI information for the ESBWR design certification rule. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as (1) the hearing required by 10 CFR 52.85 where the underlying application references this appendix; (2) any hearing provided under 10 CFR 52.103 where the underlying COL references this appendix; and (3) any other hearing relating to this appendix in which interested persons have the right to request an adjudicatory hearing.

For proceedings where the notice of hearing was published before [EFFECTIVE DATE OF FINAL RULE], the Commission's order governing access to SUNSI and SGI shall be used to govern access to proprietary information, SUNSI, and SGI within the scope of the rulemaking. For proceedings in which the notice of hearing or opportunity for hearing is published after [EFFECTIVE DATE OF FINAL RULE], paragraph VI.E applies and governs access to proprietary information, SUNSI, and SGI. For these proceedings, as stated in paragraph VI.E, the NRC will specify the access procedures at an appropriate time.

For both a hearing required by 10 CFR 52.85 where the underlying application references this appendix, and in any hearing on ITAAC completion under 10 CFR 52.103, the NRC expects to follow its current practice of establishing the procedures by order at the time that the notice of hearing is published in the **Federal Register**. *See,* for example, Florida Power and Light Co., Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order

[2] Certain activities, ordinarily conducted following fuel load and therefore considered "operational requirements" but which may be relied upon to support a Commission finding under 10 CFR 52.103(g), may themselves be the subject of ITAAC to ensure their implementation prior to the 10 CFR 52.103(g) finding.

Imposing Procedures for Access to SUNSI and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to SUNSI and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009).

G. Duration of This Appendix (Section VII)

The purpose of Section VII would be, in part, to specify the period during which this design certification may be referenced by an applicant for a COL, under 10 CFR 52.55. This section would also state that the design certification would remain valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification would be effective until the application is withdrawn or the license issued on that application expires. Also, the design certification would be effective for the referencing licensee if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to, or plant-specific departures from, information in the plant-specific DCD must be made under the change processes in Section VIII for the life of the plant.

H. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII would be to set forth the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this DCR. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and operational requirements. The language of Section VIII distinguishes between generic *changes to* the DCD versus plant-specific *departures from* the DCD. Generic *changes* must be accomplished by rulemaking because the intended subject of the change is this DCR itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(3), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change ["modification" in the language of 10 CFR 52.63(a)(3)] "technically irrelevant." By contrast, plant-specific *departures* could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a 10 CFR 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X would require an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as "change processes."

Section VIII refers to an exemption from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that when the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 52.7.

Tier 1 Information

The change processes for Tier 1 information would be covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemakings that amend the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1) and 10 CFR 52.63(a)(2). No matter who proposes it, a generic change under 10 CFR 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve selected design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. The rulemakings must provide for notice and opportunity for public comment on the proposed change, as required by 10 CFR 52.63(a)(2). The Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

Departures from Tier 1 may occur in two ways: (1) the Commission may *order* a licensee to depart from Tier 1, as provided in paragraph VIII.A.3; or (2) an applicant or licensee may request an *exemption* from Tier 1, as provided in paragraph VIII.A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph VIII.A.3 would require that the Commission find both that the departure is necessary for adequate protection or for compliance and that special circumstances are present. Paragraph VIII.A.4 would provide that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.98(f), which provide an opportunity for a hearing. In addition, the Commission would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

Tier 2 Information

The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, would be set forth in paragraph VIII.B. The change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions would be different.

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph VIII.B.1, generic Tier 2 changes would be accomplished by rulemaking amending the generic DCD and would be governed by the standards in 10 CFR 52.63(a)(1). No matter who proposes it, a generic change under 10 CFR 52 52.63(a)(1) will not be made to a certified design while it is in effect unless the change: (1) Is necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve selected design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety,

reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 would occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph VIII.B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph VIII.B.4; (3) a licensee may make a departure without prior NRC approval under paragraph VIII.B.5; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph VIII.B.5 as provided in paragraph VIII.B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information under paragraph VIII.B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures could not be imposed except when necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph VIII.B.3. However, the special circumstances for the Commission-ordered Tier 2 departures would not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(4). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(4) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee would be permitted to request an exemption from Tier 2 information as set forth in paragraph VIII.B.4. The applicant or licensee would have to demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption would be subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption would be subject to litigation in the same manner as a license amendment.

Paragraph VIII.B.5 would allow an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to, or departure from, Tier 1 or Tier 2* information, TS, or does not require a license amendment under paragraphs VIII.B.5.b or VIII.B.5.c. The TS referred to in VIII.B.5.a of this paragraph are the TS in Chapter 16 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific TS would be controlling under paragraph VIII.B.5. The bases for the plant-specific TS would be controlled by the bases control program, which is specified in the plant-specific TS administrative controls section. The requirement for a license amendment in paragraph VIII.B.5.b would be similar to the requirement in 10 CFR 50.59 and apply to all information in Tier 2 except for the information that resolves the severe accident issues.

The Commission believes that the resolution of ex-vessel severe accident design features should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377, "Requirements for Design Certification Under 10 CFR Part 52," dated February 15, 1991, ADAMS Accession No. ML003707892). However, because of the increased uncertainty in ex-vessel severe accident issue resolutions, the Commission has proposed separate criteria in paragraph VIII.B.5.c for determining if a departure from information that resolves ex-vessel severe accident design features would require a license amendment. For purposes of applying the special criteria in paragraph VIII.B.5.c, ex-vessel severe accident resolutions would be limited to design features where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel, and the containment is being challenged. These design features are identified in Sections 19.2.3, 19.3.2, 19.3.3, 19.3.4, and Appendices 19A and 19B of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for ex-vessel severe accident design features. However, the special procedure in paragraph VIII.B.5.c would not apply to design features that resolve so-called "beyond design-basis accidents" or other low-probability events. The important aspect of this special procedure is that it would be limited to ex-vessel severe accident design features, as defined above. Some design features may have intended functions to meet "design basis" requirements and to resolve "severe accidents." If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraphs VIII.B.5.b or VIII.B.5.c would be selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under paragraph VIII.B.5, would be required to prepare an evaluation which provides the bases for the determination that the proposed change does not require a license amendment or involve a change to Tier 1 or Tier 2* information, or a change to the TS, as explained above. In order to achieve the Commission's goals for design certification, the evaluation would need to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review.

The evaluation of the relevant matters would need to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design-basis accidents, and severe accidents. The evaluation would also have to include a review of all relevant secondary references from the DCD because Tier 2 information, which is intended to be treated as a requirement, would be contained in the secondary references. The evaluation should consider Tables 14.3–1a through 14.3–1c and 19.2–3 of the generic DCD to ensure that the proposed change does not impact Tier 1 information. These tables contain cross-references from the safety analyses and probabilistic risk assessment in Tier 2 to the important parameters that were included in Tier 1.

Paragraph VIII.B.5.d addresses information described in the DCD to address aircraft impacts, in accordance with 10 CFR 52.47(a)(28). Under 10 CFR 52.47(a)(28), applicants are required to include the information required by 10 CFR 50.150(b) in their DCD. Under 10 CFR 50.150(b), applications for standard design certifications are required to include:

1. A description of the design features and functional capabilities identified as a result of the aircraft impact assessment required by 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

An applicant or licensee who changes this information is required to consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by 10 CFR 50.150(a). The applicant or licensee is also required to describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1). Submittal of this updated information is governed by the reporting requirements in Section X.B.

In an adjudicatory proceeding (*e.g.,* for issuance of a COL) a person who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information, would be permitted to petition to admit such a contention into the proceeding under paragraph VIII.B.5.f. This provision has been proposed because an incorrect departure from the requirements of this appendix essentially would place the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly founded contentions alleging such incorrectly implemented departures cannot be considered "resolved" by this rulemaking. As set forth in paragraph VIII.B.5.f, the petition would have to comply with the requirements of 10 CFR 2.309 and show that the departure does not comply with paragraph VIII.B.5. Other persons would be allowed to file a response to the petition under 10 CFR 2.309. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter would be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging nonconformance with paragraph VIII.B.5 requirements applicable to Tier 2 departures would be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph VIII.B.6 would provide a process for departing from Tier 2* information. The creation of and restrictions on changing Tier 2* information resulted from the development of the Tier 1 information for the ABWR design certification (Appendix A to 10 CFR part 52) and the System 80+ design certification (Appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes, which would not be specified in Tier 1 that are acceptable for meeting ITAAC, were specified in Tier 2. The result of these departures would be that certain significant information only exists in Tier 2 and the Commission would not want this significant information to be changed without prior NRC approval. This Tier 2* information would be identified in the generic DCD with italicized text and brackets (*See* Table 1D–1 in Appendix 1D of the ESBWR DCD).

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full (100 percent) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2* information could expire after full power is first achieved (first full power) were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in paragraph VIII.B.6.c would cease to retain its Tier 2* designation after full-power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information would be deemed to be Tier 2 information that would be subject to the departure requirements in paragraph VIII.B.5. By contrast, the Tier 2* information identified in paragraph VIII.B.6.b would retain its Tier 2* designation throughout the duration of the license, including any period of license renewal.

Certain preoperational tests in paragraph VIII.B.6.c would be designated to be performed only for the first plant that references this appendix. The GEH's basis for performing these "first-plant-only" preoperational tests is provided in Section 14.2.8 of the DCD. The NRC found GEH's basis for performing these tests and its justification for only performing the tests on the first plant acceptable. The NRC's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests would result in significant thermal transients being applied to critical plant components. The NRC believes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems would be adequately disclosed after performing the designated tests on the first plant. The Tier 2* designation for these tests would expire after the first completes these tests, as indicated in paragraph VIII.B.6.c.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information would be subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure from Tier 2* information, it would be treated as a license amendment under 10 CFR 50.90 and the finality would be determined under paragraph VI.B.5. Any requests for departures from Tier 2* information that affects Tier 1 would also have to comply with the requirements in paragraph VIII.A.

Operational Requirements

The change process for TS and other operational requirements in the DCD would be set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change processes in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for TS and other operational requirements (refer to paragraph V.F of this document), the Commission designated a special category of information, consisting of the TS and other operational requirements, with its own change

process in proposed paragraph VIII.C. The key to using the change processes proposed in Section VIII is to determine if the proposed change or departure would require a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B would apply. However, if a proposed change to the TS or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C would apply. The language in paragraph VIII.C would also distinguish between generic (Chapter 16 of the DCD) and plant-specific TS to account for the different treatment and finality accorded TS before and after a license is issued.

The process in paragraph VIII.C.1 for making generic changes to the generic TS in Chapter 16 of the DCD or other operational requirements in the generic DCD would be accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic TS and other operational requirements were completely reviewed and approved in the design certification rulemaking would be based upon the extent to which the NRC reached a safety conclusion in the FSER on this matter. If it cannot be determined, in the absence of a specific statement, that the TS or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there would be no backfit restriction under 10 CFR 50.109 because no prior position, consistent with paragraph VI.B, was taken on this safety matter. Generic changes made under paragraph VIII.C.1 would be applicable to all applicants or licensees (refer to paragraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Some generic TS and availability controls contain values in brackets [ ]. The brackets are placeholders indicating that the NRC's review is not complete, and represent a requirement that the applicant for a COL referencing the ESBWR DCR must replace the values in brackets with final plant-specific values (refer to guidance provided in Interim Staff Guidance DC/COL–ISG–8, "Necessary Content of Plant-Specific Technical Specifications"). The values in brackets are neither part of the design certification rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic TS or availability controls.

Plant-specific departures may occur by either a Commission order under paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the TS or operational requirement was completely reviewed and approved for these processes would be the same as for paragraph VIII.C.1 above. If the TS or operational requirement is comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there would be no restriction on plant-specific changes to the TS or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic TS were reviewed and approved by the NRC staff in support of the DC review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific TS. The process for petitioning to intervene on a TS or operational requirement contained in paragraph VIII.C.5 would be similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present pursuant to 10 CFR 2.335.

Finally, the generic TS would have no further effect on the plant-specific TS after the issuance of a license that references this appendix. The bases for the generic TS would be controlled by the change process in paragraph VIII.C. After a license is issued, the bases would be controlled by the bases change provision set forth in the administrative controls section of the plant-specific TS.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) (Section IX)

This section is reserved for future use.

J. Records and Reporting (Section X)

The purpose of Section X would be to set forth the requirements that would apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X would also set forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix would be similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 would require that a generic DCD and the SUNSI (including proprietary information) and SGI referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD concept was developed, in part, to meet the OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the SUNSI (including proprietary information) and SGI could not be included in the generic DCD because they are not publicly available. Nonetheless, the SUNSI (including proprietary information) and SGI was reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is not in the generic DCD, this information, or its equivalent, is required to be provided by an applicant for a license referencing this design certification rule. Paragraph X.A.1 would require the design certification applicant to maintain the SUNSI (including proprietary information) and SGI, which it developed and used to support its design certification application. This would ensure that the referencing applicant has direct access to this information from the design certification applicant, if it has contracted with the applicant to provide the proprietary information and SGI to support its license application. The NRC may also inspect this information if it was not submitted to the NRC (*e.g.,* the aircraft impact assessment required by 10 CFR 50.150). Only the generic DCD would be identified and incorporated by reference into this rule. The generic DCD and the NRC-approved version of the SUNSI (including proprietary information) and SGI would be maintained for the period of time that this appendix may be referenced.

Paragraphs X.A.2 and X.A.3 would place recordkeeping requirements on the applicant or licensee that references this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII. The term "plant-specific" would be used in paragraph X.A.2 and other sections of this appendix to distinguish between the generic DCD that would be incorporated by reference into this appendix, and the plant-specific DCD that the applicant would be required to submit under paragraph IV.A. The requirement to maintain changes to the generic DCD would be explicitly stated to ensure that these changes are not only reflected in the generic DCD, which would be maintained by the applicant for design certification, but also in the plant-specific DCD. Therefore, records of generic changes to the DCD would be required to be maintained by both

entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A.4.a would require the applicant to maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This proposed provision, which is consistent with 10 CFR 50.150(c)(3), will facilitate any NRC inspections of the assessment that the NRC decides to conduct. Similarly, the NRC is proposing new paragraph X.A.4.b that would require an applicant or licensee who references this appendix to maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) will be met.

Paragraph X.A would not place recordkeeping requirements on site-specific information that is outside the scope of this rule. As discussed in paragraph IV.D of this document, the FSAR required by 10 CFR 52.79 would contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase "site-specific portion of the final safety analysis report" in paragraph X.B.3.c would refer to the information that is contained in the FSAR for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A). Therefore, this rule would not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD would be part of the FSAR for the facility.

Paragraph X.B.1 would require applicants or licensees that reference this rule to submit reports, which describe departures from the DCD and include a summary of the written evaluations. The requirement for the written evaluations would be set forth in paragraph X.A.1. The frequency of the report submittals would be set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations would be similar to the requirement in 10 CFR 50.59(d)(2).

Paragraph X.B.2 would require applicants or licensees that reference this rule to submit updates to the DCD, which include both generic changes and plant-specific departures. The frequency for submitting updates would be set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting the reports and updates would vary according to certain time periods during a facility's lifetime. If a potential applicant for a COL who references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph X.B.3.a would require that the updated DCD be submitted as part of the initial application for a license. Under paragraph X.B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant.

Paragraph X.B.3.b would also require semi-annual submission of the reports required by paragraph X.B.1 throughout the period of application review and construction. The NRC would use the information in the reports to help plan the NRC's inspection and oversight during this phase, when the licensee is conducting detailed design, procurement of components and equipment, construction, and preoperational testing. In addition, the NRC would use the information in making its finding on ITAAC under 10 CFR 52.103(g), as well as any finding on interim operation under section 189.a.(1)(B)(iii) of the AEA. Once a facility begins operation (for a COL under 10 CFR part 52, after the Commission has made a finding under 10 CFR 52.103(g)), the frequency of reporting would be governed by the requirements in paragraph X.B.3.c.

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of this chapter. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

VII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Rockville, Maryland 20852, e-mail: *pdr.resource@nrc.gov.*

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal rulemaking Web site, *http://www.regulations.gov,* by searching under Docket ID NRC–2010–0135.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

Document	PDR	Web	ERR (ADAMS)
SECY–11–0006, "Proposed Rule—ESBWR Design Certification"	X	X	ML102220172
Staff Requirements Memorandum for SECY–11–0006, "Proposed Rule—ESBWR Design Certification"	X	X	ML110670047
GE-Hitachi Nuclear Energy Application for Design Certification of the ESBWR Design	X	X	ML052450245
ESBWR Design Control Document, Revision 9	X	X	ML103440266
ESBWR Final Safety Evaluation Report	X	.....	ML103470210
ESBWR Environmental Assessment	X	X	ML102220247
NEDO–33306, Revision 4, "ESBWR Severe Accident Mitigation Design Alternatives"	X	.....	ML102990433
NEDO–33338, Revision 1, "ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis".	X	.....	ML091380173
NEDC–33408P, Revision 1, "ESBWR Steam Dryer—Plant Based Load Evaluation Methodology"	X	.....	ML102880132
Staff Requirements Memorandum for SECY–96–077, "Certification of Two Evolutionary Designs"	X	.....	ML003754873
SECY–94–084, "Policy and Technical Issues Associated with the Regulatory Treatment of Non-Safety Systems in Passive Plant Designs".	X	.....	ML003708068

Document	PDR	Web	ERR (ADAMS)
Staff Requirements Memorandum for SECY–90–377, "Requirements for Design Certification Under 10 CFR Part 52".	X	.....	ML003707892
NUREG–0700, Revision 2, "Human-Systems Interface Design Review Guidelines" (three volumes)	X	.....	ML021700337 ML021700342 ML021700371
NUREG–0711, Revision 2, "Human Factors Engineering Program Review Model"	.....	.....	ML040770540
NUREG–0800, Ch. 6.4, Revision 3, "Control Room Habitability System"	X	.....	ML070550069
NUREG–0800, Ch. 13.5.2.1, Revision 2, "Operating and Emergency Operating Procedures"	X	.....	ML070100635
NUREG–1242, "NRC Review of Electric Power Research Institute's Advanced Light Water Reactor Utility Requirements Document, Evolutionary Plant Designs" (five volumes).	X	.....	ML100610048 ML100430013 ML063620331 ML070600372 ML070600373
Regulatory Guide 1.206, Section C.I.1, "Standard Format and Content of Combined License Applications—Introduction and General Description of the Plant".	X	.....	ML070630005
Interim Staff Guidance DC/COL–ISG–8, "Necessary Content of Plant-Specific Technical Specifications".	X	.....	ML083310237
Regulatory History of Design Certification [3]	X	.....	ML003761550

VIII. Procedures for Access to SUNSI (Including Proprietary Information) and SGI for Preparation of Comments on the Proposed ESBWR Design Certification Rule

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification may request access to documents containing SUNSI (including proprietary information [4]), and SGI, in order to prepare their comments. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This notice of proposed rulemaking provides information specific to this rulemaking; however, nothing in this notice is intended to conflict with the SGI regulations.

Interested persons who desire access to SUNSI information on the ESBWR design constituting proprietary information should first request access to that information from the design certification applicant. A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described below.

Submitting a Request to the NRC for Access

Within 10 days after publication of this notice of proposed rulemaking, any individual or entity who, in order to submit comments on the proposed design certification, believes access to information in this rulemaking docket that the NRC has categorized as SUNSI or SGI is necessary may request access to this information. Requests for access to SUNSI or SGI submitted more than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The individual or entity requesting access to the information (hereinafter, the "requester") shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary is *rulemaking.comments@nrc.gov.* The requester must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Requests to the applicant must be sent to Rick E. Kingston, Vice President, ESBWR Licensing, GE-Hitachi Nuclear Energy, 3901 Castle Hayne Road, MC A65, Wilmington, NC 28401, e-mail: *rick.kingston@ge.com.* For purposes of complying with this requirement, a "request" includes all the information required to be submitted to the NRC as set forth in this section.

The request must include the following information:

1. The name of this design certification—ESBWR Design Certification, the rulemaking identification number RIN 3150–AI85, the rulemaking docket number NRC–2010–0135, and a citation to this **Federal Register** notice of proposed rulemaking at the top of the first page of the request;

2. The name, address, e-mail or FAX number of the requester. If the requester is an entity, the name of the individual(s) to whom access is to be provided, then the address and e-mail or FAX number for each individual, and a statement of the authority granted by the entity to each individual to review the information and to prepare comments on behalf of the entity must be provided. If the requester is relying upon another individual to evaluate the requested SUNSI and/or SGI and prepare comments, then the name, affiliation, address and e-mail or FAX number for that individual must be provided.

3.(a) If the request is for SUNSI, then the requester's need for the information in order to prepare meaningful comments on the proposed design certification must be demonstrated. Each of the following areas must be addressed with specificity:

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and design control document, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 3.(a)(i) above; and

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence

[3] The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and ERR. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

[4] For purposes of this discussion, "proprietary information" constitutes trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the FOIA and the NRC's implementing regulation at 10 CFR part 9.

(demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested information for a meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 3.(a)(i) above.

(b) If the request is for SUNSI constituting proprietary information, then a chronology and discussion of the requester's attempts to obtain the information from the design certification applicant, and the final communication from the requester to the applicant and the applicant's response with respect to the request for access to proprietary information must be submitted.

4.(a) If the request is for SGI, then the requester's "need to know" the SGI as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1) must be demonstrated. Consistent with the definition of "need to know" as stated in 10 CFR 73.2 and 10 CFR 73.22(b)(1), each of the following areas must be addressed with specificity:

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and design control document, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.(a)(i) above, and that the SGI requested is indispensible in order to develop meaningful comments; [5] and

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested SGI, in order to develop meaningful comments on the proposed design certification with respect to the issue or subject matter described in Paragraph 4.(a)(i) above.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions," must be submitted for each individual who would have access to SGI. The completed Form SF–85 will be used by the NRC's Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G, and 10 CFR 73.22(b)(2), to determine the requester's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic Questionnaire for Investigations Processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[6]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted under 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by calling 301–415–7232 or 301–492–7311; or by e-mail: to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act (AEA) of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an Federal Bureau of Investigation identification and criminal history records check;

(d) A check or money order in the amount of $200.00 [7] payable to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted; and

(e) If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals relieved from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requester should also provide a statement specifically stating which relief the requester is invoking, and explaining the requester's basis (including supporting documentation) for believing that the relief is applicable. While processing the request, the NRC's Office of Administration, Personnel Security Branch, will make a final determination whether the stated relief applies. Alternatively, the requester may contact the Office of Administration for an evaluation of their status prior to submitting the request. Persons who are not subject to the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Copies of documents and materials required by paragraphs 4(b), (c), (d), and (e), as applicable, of this section of this notice of proposed rulemaking must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05 B32M, Washington, DC 20555–0012.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

5. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

6. Based on an evaluation of the information submitted under paragraphs 3(a) and (b), or 4(a), (b), (c), and (e) above, as applicable, the NRC staff will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for SUNSI access or need to know the SGI requested.

7. For SUNSI access requests, if the NRC staff determines that the requester has established a legitimate need for access to SUNSI, the NRC staff will notify the requester in writing that access to SUNSI has been granted; *provided, however,* that if the SUNSI consists of proprietary information (*i.e.,* trade secrets or confidential or financial information), the NRC staff must first notify the applicant of the staff's determination to grant access to the requester not less than 10 days before informing the requester of the staff's decision. If the applicant wishes to challenge the NRC staff's determination, it must follow the procedures in paragraph 12 below. The NRC staff will not provide the requester access to disputed proprietary information to the requester until the procedures in paragraph 12 are completed.

The written notification to the requester will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions will

[5] Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this notice of proposed rulemaking do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.

[6] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[7] This fee is subject to change as specified by the NRC's adjustable billing rates.

include, but are not necessarily limited to, the signing of a protective order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 800–695–7403. *Please note:* Calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop T7–D24, Washington, DC 20555–0001.

8. For requests for access to SGI, if the NRC staff determines that the requester has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions will include, but are not necessarily limited to, the signing of a protective order by each individual who will be granted access to SGI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 1–800–695–7403. *Please note:* Calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop T7–D24, Washington, DC 20555–0001. Because SGI requires special handling, initial filings with the NRC should be free from such specific information. If necessary, the NRC will arrange an appropriate setting for transmitting SGI to the NRC.

9. Release and Storage of SGI. Prior to providing SGI to the requester, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

10. Filing of Comments on the Proposed Design Certification. Any comments in this rulemaking proceeding that are based upon the disclosed SUNSI or SGI information must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with all NRC requirements regarding the submission of SUNSI and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

11. Review of Denials of Access.

(a) If the request for access to SUNSI or SGI is denied by the NRC staff, the NRC staff shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

(b) Before the NRC's Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) of SGI, the NRC's Office of Administration, as specified by 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

(c) Appeals from a denial of access must be made to the NRC's Executive Director for Operations (EDO) under 10 CFR 9.29. The decision of the EDO constitutes final agency action under 10 CFR 9.29(d).

12. Predisclosure Procedures for SUNSI Constituting Trade Secrets or Confidential Commercial or Financial Information. The NRC will follow the procedures in 10 CFR 9.28 if the NRC staff determines, under paragraph 7 above, that access to SUNSI constituting trade secrets or confidential commercial or financial information will be provided to the requester. However, any objection filed by the applicant under 10 CFR 9.28(b) must be filed within 15 days of the NRC staff notice in paragraph 7 above rather than the 30-day period provided for under that paragraph. In applying the provisions of 10 CFR 9.28, the applicant for the DCR will be treated as the "submitter."

IX. Plain Language

The Presidential memorandum "Plain Language in Government Writing" published on June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this document.

X. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995 (Act), Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to approve the ESBWR standard plant design for use in nuclear power plant licensing under 10 CFR part 50 or 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the Act does not apply to this proposed rule.

XI. Finding of No Significant Environmental Impact: Availability

The NRC has determined under NEPA, and the NRC's regulations in Subpart A, "National Environmental Policy Act; Regulations Implementing Section 102(2)," of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," that a proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The NRC's generic determination in this regard is reflected in 10 CFR 51.32(b)(1). The basis for the NRC's categorical exclusion in this regard, as discussed in the 2007 final rule amending 10 CFR parts 51 and 52 (August 28, 2007; 72 FR 49352–49566), is based upon the following considerations. A design certification rule does not authorize the siting, construction, or operation of a facility referencing any particular using design;

it would only codify the ESBWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing any particular design certification rule.

In addition, consistent with 10 CFR 51.30(d) and 10 CFR 51.32(b), the NRC has prepared a draft EA for the ESBWR design addressing various design alternatives to prevent and mitigate severe accidents. The EA is based, in part, upon the NRC's review of GEH's evaluation of various design alternatives to prevent and mitigate severe accidents in NEDO–33306, Revision 4, "ESBWR Severe Accident Mitigation Design Alternatives." Based upon review of GEH's evaluation, the Commission concludes that: (1) GEH identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the ESBWR design; (2) none of the potential design alternatives are justified on the basis of cost-benefit considerations; and (3) it is unlikely that other design changes would be identified and justified during the term of the design certification on the basis of cost-benefit considerations, because the estimated core damage frequencies for the ESBWR are very low on an absolute scale. These issues are considered resolved for the ESBWR design.

The Commission is requesting comment on the draft EA. As provided in 10 CFR 51.31(b), comments on the draft EA will be limited to the consideration of SAMDAs as required by 10 CFR 51.30(d). The Commission will prepare a final EA following the close of the comment period for the proposed standard design certification. If a final rule is issued, all environmental issues concerning SAMDAs associated with the information in the final EA and NEDO–33306 will be considered resolved for facility applications referencing the ESBWR design if the site characteristics at the site proposed in the facility application fall within the site parameters specified in NEDO–33306.

The draft EA, upon which the Commission's finding of no significant impact is based, and the ESBWR DCD are available for examination and copying at the NRC's Public Document Room, One White Flint North, Room O–1 F21, 11555 Rockville Pike, Rockville, Maryland 20852.

XII. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: Appendix E to 10 CFR Part 52, ESBWR Design Certification, Proposed Rule.

Current OMB Approval Number: 3150–0151.

The form number if applicable: Not applicable.

How often the collection is required: Semi-annually.

Who will be required or asked to report: Applicant for a combined license or a design certification amendment.

An estimate of the number of annual responses: 3 (1 response plus 2 recordkeepers).

The estimated number of annual respondents: 2.

An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 45 additional burden hours (5 hours reporting plus 40 hours recordkeeping).

Abstract: The NRC proposes to amend its regulations to certify the ESBWR standard plant design under Subpart B of 10 CFR part 52. This action is necessary so that applicants or licensees intending to construct and operate an ESBWR design may do so by referencing this DCR. The applicant for certification of the ESBWR design is GE-Hitachi Nuclear Energy.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by April 25, 2011 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, *http://www.regulations.gov,* Docket ID NRC–2010–0135. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor

prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the size standards set established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

XV. Backfitting

The Commission has determined that this proposed rule does not constitute a backfit as defined in the backfit rule (10 CFR 50.109) because this design certification does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or changed requirements on existing DCRs in Appendices A through D to 10 CFR part 52. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification, Incorporation by reference.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

2. In 10 CFR 52.11, paragraph (b) is revised to read as follows:

§ 52.11 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in 10 CFR part 52, 52.7, 52.15, 52.16, 52.17, 52.29, 52.35, 52.39, 52.45, 52.46, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.80, 52.93, 52.99, 52.110, 52.135, 52.136, 52.137, 52.155, 52.156, 52.157, 52.158, 52.171, 52.177, and appendices A, B, C, D, E, and N to this part.

3. Appendix E to 10 CFR part 52 is added to read as follows:

Appendix E to Part 52—Design Certification Rule for the ESBWR Design

I. Introduction

Appendix E constitutes the standard design certification for the Economic Simplified Boiling-Water Reactor (ESBWR) design, in accordance with 10 CFR part 52, Subpart B. The applicant for certification of the ESBWR design is GE-Hitachi Nuclear Energy.

II. Definitions

A. *Generic design control document (generic DCD)* means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications (generic TS)* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means that portion of the combined license (COL) final safety analysis report (FSAR) that sets forth both the generic DCD information and any plant-specific changes to generic DCD information.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in paragraph III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47(a) and 52.47(c), with the exception of generic TS and conceptual design information;
2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met;
3. COL action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR; and
4. The availability controls in Appendix 19ACM of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in paragraph VIII.B.6 of this appendix. This designation expires for some Tier 2* information under paragraph VIII.B.6 of this appendix.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or
2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. All Tier 1, Tier 2 (including the availability controls in Appendix 19ACM), and the generic TS in the ESBWR DCD, Revision 9, dated December 2010, are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the generic DCD from Rick E. Kingston, Vice President, ESBWR Licensing, GE–Hitachi Nuclear Energy, 3901 Castle Hayne Road, MC A65, Wilmington, NC 28401. Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. To view the generic DCD in ADAMS, search under ADAMS Accession No. ML103440266. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, then contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* A copy of the generic DCD is also available for examination and copying at the NRC PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are also available for examination at the NRC Library, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland 20852, telephone: 301–415–5610, e-mail: *library.resource@nrc.gov.* All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* The generic DCD can also be viewed at the Federal rulemaking Web site, *http://www.regulations.gov,* by searching for documents filed under Docket ID NRC–2010–0135.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the availability controls in Appendix 19ACM of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in NEDO–33306, Revision 4, "ESBWR Severe Accident Mitigation Design Alternatives," are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the ESBWR design or NUREG–XXXX, "Final Safety Evaluation Report Related to Certification of the ESBWR Standard Design," (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a COL that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the ESBWR design, either by including or incorporating by reference the generic DCD information, and as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating that the site characteristics fall within the site parameters and that the interface requirements have been met;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the sensitive, unclassified, non-safeguards information (SUNSI) (including proprietary information) and safeguards information (SGI) referenced in the ESBWR generic DCD.

4. Include, as part of its application, a demonstration that an entity other than GE–Hitachi Nuclear Energy is qualified to supply the ESBWR design unless GE–Hitachi Nuclear Energy supplies the design for the applicant's use.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the ESBWR design are in 10 CFR parts 20, 50, 73, and 100, codified as of [DATE THE FINAL RULE IS SIGNED BY THE SECRETARY OF THE COMMISSION], that are applicable and technically relevant, as described in the FSER (NUREG–XXXX).

B. The ESBWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Contents of Applications: Technical Information.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the ESBWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the ESBWR design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic TS and other operational requirements such as human factors engineering procedure development and training program development in Chapters 18.9 and 18.10 of the generic DCD, associated with the information in the FSER, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the availability controls in Appendix 19ACM of the DCD), and the rulemaking record for certification of the ESBWR design;

2. All nuclear safety and safeguards issues associated with the referenced information in SUNSI (including proprietary information) and safeguards information which, in context, are intended as requirements in the generic DCD for the ESBWR design, with the exception of human factors engineering procedure development and training program development in Chapters 18.9 and 18.10 of the generic DCD;

3. All generic changes to the DCD under and in compliance with the change processes in paragraphs VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in paragraphs VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the ESBWR design (ADAMS Accession No. ML102220247) and NEDO–33306, Revision 4, "ESBWR Severe Accident Mitigation Design Alternatives," (ADAMS Accession No. ML102990433) for plants referencing this appendix whose site characteristics fall within those site parameters specified in NEDO–33306.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review portions of the design certification or references containing SGI or SUNSI (including proprietary information [8]), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**],

[8] Proprietary information includes trade secrets and commercial or financial information obtained from a person that are privileged or confidential. 10 CFR 2.390 and 10 CFR part 9.

except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under 10 CFR 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the TS, or requires a license amendment under paragraph B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR 52.47(a)(28) to address aircraft impacts, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. A proposed departure from Tier 2 information required by 10 CFR 52.47(a)(28) to address aircraft impacts shall consider the effect of the changed design feature or functional capability on the original aircraft impact assessment required by 10 CFR 50.150(a). The applicant or licensee shall describe in the plant-specific DCD how the modified design features and functional capabilities continue to meet the aircraft impact assessment requirements in 10 CFR 50.150(a)(1).

e. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

f. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

g. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel mechanical and thermal-mechanical design evaluation reports, including fuel burnup limits.

(2) Control rod mechanical and nuclear design reports.

(3) Fuel nuclear design report.

(4) Critical power correlation.

(5) Fuel licensing acceptance criteria.

(6) Control rod licensing acceptance criteria.

(7) Mechanical and structural design of spent fuel storage racks.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler and Pressure Vessel Code, Section III.

(2) American Concrete Institute 349 and American National Standards Institute/

American Institute of Steel Construction-N690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Instrument setpoint methodology.

(7) Safety-Related Distribution Control and Information System performance specification and architecture.

(8) Safety System Logic and Control hardware and software.

(9) Human factors engineering design and implementation.

(10) First of a kind testing for reactor stability (first plant only).

(11) Reactor precritical heatup with reactor water cleanup/shutdown cooling (first plant only).

(12) Isolation condenser system heatup and steady state operation (first plant only).

(13) Power maneuvering in the feedwater temperature operating domain (first plant only).

(14) Load maneuvering capability (first plant only).

(15) Defense-in-depth stability solution evaluation test (first plant only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for the issuance, amendment, or renewal of a license, or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

[Reserved]

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the SUNSI (including proprietary information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

4.a. The applicant for the ESBWR design shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 of this appendix must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 16th day of March 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–6839 Filed 3–23–11; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD66

Interest Rate Risk

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its regulations to require Federally insured credit unions to have a written policy addressing interest rate risk (IRR) management and an effective IRR program as part of their asset liability management. NCUA also is proposing draft guidance in the form of an appendix to its regulations to assist

credit unions in meeting the proposed regulatory requirement. NCUA believes a written IRR policy and an effective IRR program is key to maintaining safe and sound operations. NCUA believes credit unions will find the guidance helpful in addressing this important area of their operations.

DATES: Comments must be received on or before May 23, 2011.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] —Comments on Proposed Rulemaking for Part 741" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Capital Markets Specialist, Office of Capital Markets and Planning, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, or *telephone:* (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Discussion

NCUA proposes to amend its regulations to require Federally insured credit unions (FICUs) to have a written policy and an effective program addressing interest rate risk (IRR) as part of their asset liability management (ALM). NCUA believes FICUs need a written policy to explicitly state the credit union's IRR tolerance. An effective IRR program that identifies, measures, monitors, and controls IRR is an essential component of safe and sound credit union operations. In the past, NCUA issued guidance on ALM and IRR management in Letters to Credit Unions and believes FICUs generally are managing IRR adequately.[1] NCUA's IRR questionnaire is also available at the following location *http://www.ncua.gov/Resources/ALManagementInvest/ReviewProcedures.aspx.* However, IRR has risen at credit unions due to changes in balance sheet compositions and increased uncertainty in the financial markets. The Board therefore believes it is appropriate to create a regulatory requirement addressing the policy and practice of interest rate risk management at FICUs supported by clear and comprehensive guidance. The Board believes the proposed regulatory requirement and guidance will assist FICUs in understanding and meeting NCUA's expectations regarding IRR policy and implementing an effective program. NCUA anticipates that it would set a compliance date of three months after the rule becomes effective.

The term "interest rate risk" refers to the vulnerability of a credit union's financial condition to adverse movements in market interest rates. Although some IRR is a normal part of financial intermediation, IRR may negatively affect a credit union's earnings, or net economic value, which is the difference between the market value of assets and the market value of liabilities. Changes in interest rates influence a credit union's earnings by altering interest-sensitive income and expenses (*e.g.* loan income and share dividends). Changes in interest rates also affect the economic value of a credit union's assets and liabilities, because the present value of future cash flows and, in some cases, the cash flows themselves may change when interest rates change.[2]

An effective IRR program allows a credit union to serve member needs without incurring unreasonable levels of risk and make informed decisions about balance sheet composition, growth and product mix, while remaining within its defined tolerance level. An IRR program enables credit unions to meet their liquidity needs and implement flexible pricing strategies in response to changes in market interest rates while maintaining adequate earnings and net economic value.

NCUA recognizes it is impossible to establish specific, regulatory requirements for IRR that would be appropriate for all FICUs. IRR management involves judgment by a FICU based on its own individual mission, structure, and circumstances. Any rule must take into account the diversity of FICUs and avoid a one-size-fits-all approach. Accordingly, FICUs should devise a policy and risk management program appropriate to their own situation.

The guidance in the Appendix does not identify specific metrics because NCUA recognizes IRR programs will differ among credit unions. There are, nevertheless, fundamental elements applicable to all credit unions, as explained in the appendix. Developing a sound IRR program is the responsibility of the board of directors, involving all relevant phases of operation, and NCUA believes the proposed guidance provides a helpful framework for directors. NCUA is presenting guidance in the form of an appendix to the rule to assist FICUs in establishing a written policy and effective program as part of asset liability management.

B. Proposed Rule

Section 741.3 generally addresses the criteria NCUA will consider in determining and continuing the insurability of a credit union and paragraph (b) lists various factors and requirements for a credit union's financial condition and its policies. Currently, § 741.3(b) includes requirements, among others, of written lending and investment policies, 12 CFR 741.3(b)(2) and (3), and, therefore, placement of the proposed amendment within this provision is appropriate. The Board proposes to amend § 741.3(b) to add the requirement of a written policy on IRR and an effective program. This is an additional factor to be considered in determining whether a credit union's financial condition and

[1] *Letters to Credit Unions:* 99–CU–12 Real Estate Lending and Balance Sheet Management; 00–CU–10 Asset Liability Management Procedures; 00–CU–13, Liquidity and Balance Sheet Management; 01–CU–08, Liability Management—Rate-Sensitive and Volatile Funding Sources; 01–CU–19 Managing Share Inflows in Uncertain Times; 03–CU–11, Non-maturity Shares and Balance Sheet Risk; 03–CU–15 Real Estate Concentrations and Interest Rate Risk Management for Credit Unions with Large Positions in Fixed Rate Mortgages; 06–CU–16 Inter-Agency Guidance on Non-traditional Mortgage Product Risk. Interagency Advisory on Interest Rate Risk Management, January 6, 2010.

[2] Credit unions confront IRR from several sources. These include repricing risk, yield curve risk, spread risk, basis risk, and options risk. *See* the glossary of terms in Appendix B for definitions of these risks.

policies are safe and sound. 12 CFR 741.3(b).

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. The proposed rule does not apply to credit unions with less than ten million dollars in assets. Accordingly, the Board determines that this proposed rule will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d). For purposes of the PRA, a paperwork burden may take the form of a either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the requirement to have a written interest rate policy creates a new information collection requirement. NCUA is applying to the Office of Management and Budget (OMB) for approval of the proposed information collection requirement.

As required by the PRA, NCUA is submitting a copy of this proposed regulation to the OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule should submit them to the OMB at the address noted below.

Written policy requirements

The proposed rule would require a written interest rate policy and would apply to all Federally insured credit unions (FICUs) as follows. FICUs with assets over $50 million must meet the requirement for a written policy. FICUs with assets $10 million or over and less than or equal to $50 million must meet the requirement for a written policy if the total of first mortgage loans held plus total investments with maturities greater than five years is equal to or greater than 100% of its net worth. FICUs with assets $10 million or over and less than or equal to $50 million are not required to have a written policy if the total of first mortgage loans held plus total investments with maturities greater than five years is less than 100% of its net worth. FICUs less than $10 million in assets are not required by the rule to have a written policy even if the total of first mortgage loans held plus total investments with maturities greater than five years is greater than 100% of its net worth.

A FICU is considered to hold a first mortgage loan for its own portfolio when it has not demonstrated the intent and ability to sell the loan to an independent third party within 120 days. Investments with maturities greater than five years are defined as those reported by the FICU to have maturities of 5–10 years and greater than 10 years in the statement of financial condition of its most recent call report.

For example, Credit Union A has assets of $51 million. The percentage of first mortgage loans held by Credit Union A plus its investments with maturities greater than five years is 75% of its net worth. It is required by the rule to have a written interest rate policy because of its asset size. Credit Union B has $45 million in assets. The percentage of first mortgage loans held by Credit Union B plus its investments with maturities greater than five years is 75% of its net worth. Credit Union B is therefore not required by the rule to have a written interest rate policy since this percentage is less that 100%. Credit Union C has assets of $10 million and the percentage of first mortgage loans held by Credit Union C plus its investments with maturities greater than five years is 125% of its net worth. It is required to have a written interest rate policy because it has assets $10 million or over and less than or equal to $50 million, and the percentage of first mortgage loans held by Credit Union C plus its investments with maturities greater than five years is greater than 100% of its net worth. Credit Union D has assets of $9 million and the percentage of first mortgage loans held by Credit Union D plus its investments with maturities greater than five years is 125% of its net worth. Credit Union D is not required by the rule to have a written interest rate policy because its asset size is below $10 million, even though the percentage of first mortgage loans held by Credit Union D plus its investments with maturities greater than five years is greater than 100% its net worth.

As of December 31, 2010, there were 7339 FICUs, of which 3184 had assets over $50 million, or had assets $10 million or over and less than or equal to $50 million, and total first mortgage loans plus total investments with maturities greater than five years were equal to or greater than 100% of net worth. NCUA estimates, however, that approximately 75% of these credit unions already have interest rate risk policies in place as part of their lending and asset management policies. Therefore, they will not have to undertake any significant additional burden as a result of this rulemaking. NCUA estimates that those credit unions with existing policies will only need to undertake a review of those policies to determine if they are in line with the guidance accompanying this rule change. While minor adjustments to existing policies may be appropriate, NCUA estimates that approximately only 25% of the credit unions will need to prepare a written policy. Therefore, NCUA estimates that approximately 800 credit unions will need to develop a written interest rate risk policy to meet the requirement for a written policy; NCUA notes that periodic review of the policy, while included as part of the guidance, may require no additional paperwork burden or engender very limited additional paperwork.

The proposed rule requiring a written interest rate risk policy is accompanied by guidance on how to establish this policy and the guidance essentially provides a template or list of the eight points the written policy should address. As provided in the guidance, the points to be covered are:

- Identify committees, persons or other parties responsible for review of the credit union's IRR exposure;
- Direct appropriate actions to ensure management takes steps to manage IRR so that IRR exposures are identified, measured, monitored, and controlled;
- State the frequency with which management will report on measurement results to the board to ensure routine review of information that is timely (*e.g.* current and at least quarterly) and in sufficient detail to assess the credit union's IRR profile;
- Set risk limits for IRR exposures based on selected measures (*e.g.* limits for changes in repricing or duration gaps, income simulation, asset valuation, or net economic value);
- Choose tests, such as interest rate shocks, that the credit union will perform using the selected measures;
- Provide for periodic review of material changes in IRR exposures and compliance with board approved policy and risk limits;
- Provide for assessment of the IRR impact of any new business activities prior to implementation (*e.g.* evaluate the IRR profile of introducing a new product or service) ; and
- Provide for annual evaluation of policy to determine whether it is still

commensurate with the size, complexity, and risk profile of the credit union.

The actual length of a policy may vary significantly depending on the complexity of the credit union's activities. For example, a credit union that offers basic share accounts, only short-term loans, *i.e.,* no mortgage loans, and makes relatively simple investments should be able to establish a written policy in one to two hours. The policy could establish maturity limits for loans, establish the minimum amount of short-term funds, and basically restrict the types of permissible investments (*e.g.* Treasuries). More complex balance sheets, especially those containing mortgage loans and complex investments, may warrant a comprehensive IRR policy due to the uncertainty of cash flows.

Burden Calculation

While the burden will vary depending on the complexity of credit union activities, for purposes of providing an estimated average, NCUA estimates each of the eight segments of policy will have a burden of an equal weight of two hours. The maximum time for all segments of the policy is therefore sixteen hours. NCUA estimates the burden associated with this collection as follows: 800 × 16 hours = 12,800 hours.

Organizations and individuals that wish to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on March 17, 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C, 3717.

2. In § 741.3, add paragraph (b)(5) to read as follows:

§ 741.3 Criteria

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(b) * * *

(5)(i) The existence of a written interest rate risk policy and an effective interest rate risk management program as part of asset liability management in all Federally insured credit unions (FICUs) as follows. FICUs with assets over $50 million must meet the requirement for a written policy and an effective interest rate risk management program. FICUs with assets $10 million or over and less than or equal to $50 million must meet the requirement for a written policy and an effective interest rate risk management program if the total of first mortgage loans held plus total investments with maturities greater than five years is equal to or greater than 100% of its net worth. FICUs with assets $10 million or over and less than or equal to $50 million are not required to have a written policy and an effective interest rate risk management program if the total of first mortgage loans held plus total investments with maturities greater than five years is less than 100% of its net worth. FICUs less than $10 million in assets are not required by the rule to have a written policy and an effective interest rate risk management program even if the total of first mortgage loans held plus total investments with maturities greater than five years is greater than 100% of its net worth.

(ii) A FICU is considered to hold a first mortgage loan for its own portfolio when it has not demonstrated the intent and ability to sell the loan to an independent third party within 120 days. Investments with maturities greater than five years are defined as those reported by the FICU to have maturities of 5–10 years and greater than 10 years in the statement of financial condition of its most recent call report.

(iii) For example, Credit Union A has assets of $51 million. The percentage of first mortgage loans held by Credit Union A plus its investments with maturities greater than five years is 75% of its net worth. It is required by the rule to have a written interest rate policy and an effective interest rate risk management program because of its asset size. Credit Union B has $45

million in assets. The percentage of first mortgage loans held by Credit Union B plus its investments with maturities greater than five years is 75% of its net worth. Credit Union B is therefore not required by the rule to have a written interest rate policy and an effective interest rate risk management program since this percentage is less that 100%. Credit Union C has assets of $10 million and the percentage of first mortgage loans held by Credit Union C plus its investments with maturities greater than five years is 125% of its net worth. It is required to have a written interest rate policy and an effective interest rate risk management program because it has assets $10 million or over and less than or equal to $50 million, and the percentage of first mortgage loans held by Credit Union C plus its investments with maturities greater than five years is greater than 100% of its net worth. Credit Union D has assets of $9 million and the percentage of first mortgage loans held by Credit Union D plus its investments with maturities greater than five years is 125% of its net worth. Credit Union D is not required by the rule to have a written interest rate policy and an effective interest rate risk management program because its asset size is below $10 million, even though the percentage of first mortgage loans held by Credit Union D plus its investments with maturities greater than five years is greater than 100% its net worth.

(iv) Appendix B to this part provides guidance on how to establish an interest rate risk policy and effective program. The guidance describes widely accepted best practices in the management of interest rate risk and it may therefore be helpful to all FICUs.

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3. Part 741 is amended by adding Appendix B to read as follows:

Appendix B to Part 741—Guidance for an Interest Rate Risk Policy and an Effective Program

Table of Contents

I. Introduction
A. Complexity
B. IRR Exposure
II. IRR Policy
III. IRR Oversight and Management
A. Board of Directors Oversight
B. Management Responsibilities
IV. IRR Measurement and Monitoring
A. Risk Measurement Systems
B. Risk Measurement Methods
C. Components of IRR Measurement Methods
V. Internal Controls
VI. Decision-Making Informed by IRR Measurement Systems
VII. Standards for Assessment of IRR Policy and Effectiveness of Program
VIII. Additional Guidance for Large Credit Unions With Complex or High Risk Balance Sheets
IX. Definitions

I. Introduction

This appendix gives guidance to FICUs in the implementation of an interest rate risk (IRR) policy and program as aspects to overall asset liability management. An effective IRR management program identifies, measures, monitors, and controls IRR and is central to safe and sound credit union operations. Given the differences among credit unions, each credit union should formulate its own practices, metrics and benchmarks appropriate to its operations.

These practices should be established in light of the nature of the credit union's operations and business, as well as its complexity, risk exposure, and size. As these elements increase, NCUA believes the IRR practices should be implemented with increasing degrees of rigor and diligence to maintain safe and sound operations in the area of IRR management. In particular, rigor and diligence are required to manage complexity and risk exposure. Complexity relates to the intricacy of financial instrument structure, and to the composition of assets and liabilities on the balance sheet. In the case of financial instruments, the structure can have numerous characteristics that act simultaneously to affect the behavior of the instrument. In the case of the balance sheet, which contains multiple instruments, assets and liabilities can act in ways that are compounding or can be offsetting because their impact on the IRR level may act in the same or opposite directions. High degrees of risk exposure require a credit union to be diligently aware of the potential earnings and net worth exposures under various interest rate and business environments because the margin for error is low.

A. Complexity

In influencing the behavior of instruments and balance sheet composition, complexity is a function of the predictability of the cash flows. As cash flows become less predictable, the uncertainty of both instrument and balance sheet behavior increases. For example, a residential mortgage is subject to prepayments which will change at the option of the borrower. Mortgage borrowers may pay off their mortgage loans due to geographical relocation, or may increase the amount of their monthly payment above the minimum contractual schedule due to other changes in the borrower's circumstances. This cash flow unpredictability is also found in investments, such as collateralized mortgage obligations because these are comprised of mortgage loans. Additionally, cash flow unpredictability affects liabilities. For example, nonmaturity share balances vary at the discretion of the depositor making deposits and withdrawals, and this may be influenced by a credit union's pricing of its share accounts.

B. IRR Exposure

Exposure to IRR is the vulnerability of a credit union's financial condition to adverse movements in market interest rates. Although some IRR exposure is a normal part of financial intermediation, a high degree of this exposure may negatively affect a credit union's earnings and net economic value. Changes in interest rates influence a credit union's earnings by altering interest-sensitive income and expenses (*e.g.* loan income and share dividends). Changes in interest rates also affect the economic value of a credit union's assets and liabilities, because the present value of future cash flows and, in some cases, the cash flows themselves may change when interest rates change. Consequently, the management of a credit union's pricing strategy is critical to the control of IRR exposure.

All FICUs over $50 million, and all FICUs with assets $10 million or over and less than or equal to $50 million if the total of first mortgage loans held plus total investments with maturities greater than five years is equal to or greater than 100% of its net worth, should incorporate the following five elements into their IRR program:

1. Board-approved IRR policy;
2. Oversight by the board of directors and implementation by management;
3. Risk measurement systems assessing the IRR sensitivity of either or both:
   a. Earnings;
   b. Asset and liability values;
4. Internal controls to monitor adherence to IRR limits;
5. Decision making that is informed and guided by IRR measures.

II. IRR Policy

The board of directors is responsible for ensuring the adequacy of an IRR policy and its limits. The policy should be consistent with the credit union's business strategies and should reflect the board's risk tolerance, taking into account the credit union's financial condition and risk measurement systems and methods commensurate with the balance sheet structure. The policy should state actions and authorities required for exceptions to policy, limits, and authorizations.

Credit unions have the option of either creating a separate IRR policy or incorporating it into investment, ALM, funds management, liquidity or other policies. Regardless of form, credit unions must clearly document their IRR policy in writing.

The scope of the policy will vary depending on the complexity of the credit union's balance sheet. For example, a credit union that offers short-term loans, invests in non-complex or short-term bullet investments (*i.e.* a debt security that returns 100 percent of principal on the maturity date), and offers basic share products may not need to create an elaborate policy. The policy for these credit unions may limit the loan portfolio maturity, require a minimum amount of short-term funds, and restrict the types of permissible investments (*e.g.* Treasuries, bullet investments). More complex balance sheets, especially those containing mortgage loans and complex investments, may warrant a comprehensive IRR policy due to the uncertainty of cash flows.

The policy should establish responsibilities and procedures for identifying, measuring, monitoring,

controlling, and reporting IRR, and establish risk limits. A written policy should:

- Identify committees, persons or other parties responsible for review of the credit union's IRR exposure;
- Direct appropriate actions to ensure management takes steps to manage IRR so that IRR exposures are identified, measured, monitored, and controlled;
- State the frequency with which management will report on measurement results to the board to ensure routine review of information that is timely (*e.g.* current and at least quarterly) and in sufficient detail to assess the credit union's IRR profile;
- Set risk limits for IRR exposures based on selected measures (*e.g.* limits for changes in repricing or duration gaps, income simulation, asset valuation, or net economic value);
- Choose tests, such as interest rate shocks, that the credit union will perform using the selected measures;
- Provide for periodic review of material changes in IRR exposures and compliance with board approved policy and risk limits;
- Provide for assessment of the IRR impact of any new business activities prior to implementation (*e.g.* evaluate the IRR profile of introducing a new product or service); and
- Provide for annual evaluation of policy to determine whether it is still commensurate with the size, complexity, and risk profile of the credit union.

IRR policy limits should maintain risk exposures within prudent levels. Examples of limits are as follows.

GAP: Less than ± 10 percent change in any given period, or cumulatively over 12 months.

Income Simulation: Net interest income after shock change less than 20 percent over any 12 month period.

Asset Valuation or Net Economic Value: After shock change in book value net worth less than 25 percent or after shock value of net worth greater than 6 percent.

NCUA emphasizes these are only for illustrative purposes, and management should establish its own limits that are reasonably supported. Where appropriate, management may also set IRR limits for individual portfolios, activities, and lines of business.

III. IRR Oversight and Management

A. Board of Directors Oversight

The board of directors is responsible for oversight of their credit union and for approving policy, major strategies, and prudent limits regarding IRR. To meet this responsibility, understanding the level and nature of IRR taken by the credit union is essential. Accordingly, the board should ensure management executes an effective IRR program.

Additionally, the board should annually assess if the IRR program sufficiently identifies, measures, monitors, and controls the IRR exposure of the credit union. Where necessary, the board may consider obtaining professional advice and training to enhance its understanding of IRR oversight.

B. Management Responsibilities

Management is responsible for the daily management of activities and operations. In order to implement the board's IRR policy, management should:

- Develop and maintain adequate IRR measurement systems;
- Evaluate and understand IRR risk exposures;
- Establish an appropriate system of internal controls (*e.g.* separation between the risk taker and IRR measurement staff);
- Allocate sufficient resources for an effective IRR program. For example, a complex credit union with an elevated IRR risk profile will likely necessitate a greater allocation of resources to identify and focus on IRR exposures.
- Develop and support competent staff with technical expertise commensurate with their IRR program;
- Identify the procedures and assumptions involved in implementing the IRR measurement systems; and
- Establish clear lines of authority and responsibility for managing IRR; and
- Provide a sufficient set of reports to ensure compliance with board approved policies.

Where delegation of management authority by the board occurs, this may be to designated committees such as an asset liability committee or other equivalent. In credit unions with limited staff, these responsibilities may reside with the board or management. Significant changes in assumptions, measurement methods, tests performed, or other aspects involved in the IRR process, should be documented and brought to the attention of those responsible.

IV. IRR Measurement and Monitoring

A. IRR Measurement Systems

Generally, credit unions should have IRR measurement systems that capture and measure all material and identified sources of IRR. An IRR measurement system quantifies the risk contained in the credit union's balance sheet and integrates the important sources of IRR faced by a credit union in order to facilitate management of its risk exposures. The selection and assessment of appropriate IRR measurement systems is the responsibility of credit union boards and management.

Management should:

- Rely on assumptions that are reasonable and supportable;
- Document any changes to assumptions that should be based on observed information;
- Ensure calculation techniques are appropriate in rigor and use accepted financial concepts;
- Monitor positions with uncertain maturities, rates and cash flows, such as nonmaturity shares, fixed rate mortgages where prepayments may vary, adjustable rate mortgages, and instruments with embedded options, such as calls; and
- Require any interest rate measures and tests to be sufficiently rigorous to capture risk.

B. IRR Measurement Methods

The following discussion is intended only as a general guide and should not be used by credit unions as a checklist. An IRR measurement system may rely on a variety of different methods. Common examples of methods available to credit unions are GAP analysis, income simulation, asset valuation, and net economic value. Any measurement method(s) used by a credit union to analyze IRR exposure should correspond with the complexity of the credit union's balance sheet and display any material sources of IRR.

GAP Analysis

GAP analysis is a simple IRR measurement method that reports the mismatch between rate sensitive assets and rate sensitive liabilities over a given time period. GAP can suffice for simple balance sheets that primarily consist of short-term bullet type investments and non mortgage-related assets. GAP analysis can be static, behavioral, or based on duration.

Income Simulation

Income simulation is an IRR measurement method used to estimate earnings exposure to changes in interest rates. An income simulation analysis projects interest cash flows of all assets, liabilities, and off-balance sheet instruments in a credit union's portfolio to estimate future net interest income over a chosen timeframe. Generally, income simulations focus on short-term time horizons (*e.g.* one to three years). Forecasting income is assumption sensitive and more uncertain the longer the forecast period. Simulations typically include evaluations under a base-case scenario, and instantaneous parallel rate shocks, and may include alternate interest-rate scenarios. The alternate rate scenarios may involve ramped changes in rates, twisting of the yield curve, and/or stressed rate environments devised by the user or provided by the vendor.

NCUA Asset Valuation Tables

For credit unions lacking advanced IRR methods that seek simple valuation measures, the NCUA Asset Valuation Tables are available and prepared quarterly by the NCUA Office of Capital Markets (OCM). These are located at *http://www.ncua.gov/Resources/ALManagementInvest/ReviewProcedures.aspx.*

These measures provide an indication of a credit union's potential interest rate risk, based on the risk associated with the asset categories of greatest concern—(*e.g.,* mortgage loans and investment securities).

The tables provide a simple measure of the potential devaluation of a credit union's mortgage loans and investment securities that occur during +/- 300 basis point parallel rate shocks, and report the resulting impact on net worth.

Net Economic Value (NEV)

NEV measures the effect of interest rates on the market value of net worth by calculating the present value of assets minus the present value of liabilities. This calculation measures the credit union's balance sheet long-term IRR at a fixed point in time. By capturing the impact of interest rate changes on the value of all future cash flows, NEV provides a comprehensive measurement of IRR. Generally, NEV computations demonstrate the economic value of net worth under current interest rates and shocked interest rate scenarios.

One NEV method is to discount cash flows by a single interest rate path. Credit unions with a significant exposure to assets or liabilities with embedded options should consider alternative measurement methods such as discounting along a yield curve (*e.g.* the U.S. Treasury curve, LIBOR curve) or using multiple interest rate paths. Credit unions should apply and document appropriate methods, based on available data (*e.g.* utilizing observed market values), when valuing individual or groups of assets and liabilities.

C. Components of IRR Measurement Methods

In the initial setup of IRR measurement, critical decisions are made regarding numerous variables in the method. These variables include but are not limited to the following.

1. Chart of Accounts

Credit unions using an IRR measurement method should define a sufficient number of accounts to capture key IRR characteristics inherent within their product lines. For example, credit unions with significant holdings of adjustable-rate mortgages should differentiate balances by periodic and lifetime caps and floors, the reset frequency, and the rate index used for rate resets. Similarly, credit unions with significant holdings of fixed-rate mortgages should differentiate at least by original term, *e.g.,* 30 or 15-year, and coupon level to reflect differences in prepayment behaviors.

2. Aggregation of Data Input

As the credit union's complexity, risk exposure, and size increases, the degree of detail should be based on data that is increasingly disaggregated. Because imprecision in the measurement process can materially misstate risk levels, management should evaluate the potential loss of precision from aggregation and simplification used in its measurement of IRR.

3. Account Attributes

Account attributes define a product, including: principal type, rate type, rate index, repricing interval, new volume maturity distribution, accounting accrual basis, prepayment driver, discount rate.

4. Assumptions

IRR measurement methods rely on assumptions made by management in order to identify IRR. The simplest example is of future interest rate scenarios. The management of IRR will require other assumptions such as: projected balance sheet volumes; prepayment rates for loans and investment securities; repricing sensitivity, and decay rates of nonmaturity shares. Examples of these assumptions follow.

Example 1. Credit unions should consider evaluating the balance sheet under flat (*i.e.* static) and/or planned growth scenarios to capture IRR exposures. Under a flat scenario, runoff amounts are reinvested in their respective asset or liability account. Conducting planned growth scenarios allows management to assess the IRR impact of the projected change in volume and/or composition of the balance sheet.

Example 2. Loans and mortgage related securities contain prepayment options that enable the borrower to prepay the obligation prior to maturity. This prepayment option makes it difficult to project the value and earnings stream from these assets because the future outstanding principal balance at any given time is unknown. A number of factors affect prepayments, including the refinancing incentive, seasonality (the particular time of year), seasoning (the age of the loan), member mobility, curtailments (additional principal payments), and burnout (borrowers who don't respond to changes in the level of rates, and pay as scheduled). Prepayment speeds may be estimated or derived from numerous national or vendor data sources.

Example 3. In the process of IRR measurement, the credit union must estimate how each account will reprice in response to market rate fluctuations. For example, when rates rise 300 basis points, the credit union may raise its asset or liability rates in a like amount or not, and may choose to lag the timing of its pricing change.

Example 4. Nonmaturity shares include those accounts with no defined maturity such as share drafts, regular shares, and money market accounts. Measuring the IRR associated with these accounts is difficult because the risk measurement calculations require the user to define the principal cash flows and maturity. Credit unions may assume that there is no value when measuring the associated IRR and carry these values at book value or par. Many credit unions adopt this approach because it keeps the measurement method simple.

Alternatively, a credit union may attribute value to these shares (*i.e.* premium) on the basis that these shares tend to be lower cost funds that are core balances by virtue of being relatively insensitive to interest rates. This method generally results in nonmaturity shares priced/valued in a way that will produce an increased net economic value. Therefore, the underlying assumptions of the shares require scrutiny.

Credit unions that forecast share behavior and incorporate those assumptions into their risk identification and measurement process should perform sensitivity analysis. Guidance on the evaluation of nonmaturity shares is available in NCUA's Letter to Credit Unions 03–CU–11.

V. Internal Controls

Internal controls are an essential part of a safe and sound IRR program. If possible, separation of those responsible for the risk taking and risk measuring functions should occur at the credit union.

Staff responsible for maintaining controls should periodically assess the overall IRR program as well as compliance with policy. Internal audit staff would normally assume this role; however, if there is no internal auditor, management, or a supervisory committee that is independent of the IRR process, may perform this role. Where appropriate, management may also supplement the internal audit with outside expertise to assess the IRR program. This review should include policy compliance, timeliness, and accuracy of reports given to management and the board.

Audit findings should be reported to the board or supervisory committee with recommended corrective actions and timeframes. The individuals responsible for maintaining internal controls should periodically examine adherence to the policy related to the IRR program.

VI. Decision-Making Informed by IRR Measurement Systems

Management should utilize the results of the credit union's IRR measurement systems in making operational decisions such as changing balance sheet structure, funding, pricing strategies, and business planning. This is particularly the case when measures show a high level of IRR or when measurement results approach board-approved limits.

NCUA recognizes each credit union has its own individual risk profile and tolerance levels. However, when measures of fair value indicate net worth is low, declining, or even negative, or income simulations indicate reduced earnings, management should be prepared to identify steps, if necessary, to bring risk within acceptable levels. In any case, management should understand and use their IRR measurement results, whether generated internally or externally, in the normal course of business. Management should also use the results proactively as a tool to adjust asset liability management for changes in interest rate environments.

VII. Standards for Assessment of IRR Policy and Effectiveness of Program

The following standards will assist credit unions in determining the adequacy of their IRR policy and assess the effectiveness of their program to manage IRR. This section provides examples of adequate and inadequate elements of IRR policies and programs based on the preceding sections. Specific instances of inadequate policies and programs are in some cases identified for purposes of illustration.

	Adequate	Inadequate
Policy:		
Board oversight	Policy is consistent with credit union strategy, and the board states actions required to address policy exceptions.	Policy is not consistent with credit union complexity. Board has not reviewed limits specified in policy and does not require management to take corrective action when policy limitations are exceeded.

	Adequate	Inadequate
Responsible parties identified	A committee or management is designated to review and monitor IRR.	No committee or individual specified to review credit union's IRR exposure.
Direct appropriate action to measure, monitor, control IRR.	Policy states all actions that are sufficient to manage IRR.	Omissions in policy cause material deficiency in controlling risk (*e.g.* method of measuring IRR is not identified or risk measurement not required with stated frequency).
Reporting frequency specified	Reporting of results is required with sufficient frequency to alert management to emerging IRR.	Reporting is infrequent and does not provide adequate detail to control IRR (*e.g.* semi-annual reporting on an aggregate balance sheet).
Risk limits stated with appropriate measures.	Risk limits are established and are appropriate for the size and complexity of the credit union.	Key risk limit omitted from policy (*e.g.* NEV ratio or volatility post shock, NII post shock, or sensitivity gap at stated period), or limit is not reasonable (*e.g.* limits allow IRR measures to approach dangerously low levels under plausible interest rate scenarios).
Tests for limits	Tests substantially display the level and range of credit union IRR.	Tests do not indicate level or source of risk (*e.g.* NEV @ only +/−100 bps, or repricing gap only at one month).
Review of material IRR changes	Any changes beyond a stated level are reported to management and, where appropriate, the Board.	Review is required, but need for compliance with policy limits and corrective action is unclear.
Impact of new business	IRR impact of all business initiatives is required where these will affect future IRR.	The credit union does not evaluate the impact of new business on its IRR profile and is at risk from new business booked.
Periodic policy review	Review by Board required annually to ensure continued relevance and applicability of policy to management of IRR.	Policy review is required only if risks are unchanged, at the Board's discretion.
IRR Oversight & Management:		
Oversight	Board approves policy and strategies and understands IRR faced by its own credit union.	Board is aware of the types of IRR present to credit unions in general, but does not have knowledge of the IRR risks associated with the credit union.
Oversight assessment of program effectiveness.	Board periodically evaluates program effectiveness by monitoring management's IRR knowledge, using professional advice.	Board substantially relies on annual third party review to determine the adequacy of oversight and governance.
Choice of IRR measurement systems	Management selects and maintains systems which are able to capture the complexity of IRR risks.	Systems used by the credit union do not capture IRR (*e.g.* balance sheet contains material options in investments, mortgage loans or core deposits, which the system cannot capture—calls, prepayments, or administered rates).
Evaluation of IRR risk exposures	Credit union understands all material IRR exposures and evaluates these accordingly relative to credit union strategy.	Management relies on outside parties to evaluate credit union's IRR and cannot effectively explain the IRR measurement method or the results.
System of internal controls	Internal controls encompass and effectively evaluate programs that manage elements of IRR at the credit union.	Internal audit has not identified or addressed the correction of IRR deficiencies (*e.g.* processes for tracking changes in measurement assumptions, such as gap repricing of core deposits).
IRR resource management	Credit union has allocated initial or additional qualified staff resources sufficient to manage IRR by means that address sources of risk.	Credit union IRR exposure has materially increased without allocating additional, qualified staff, consequently IRR exposures are not identified or properly measured.
Expertise of IRR program staff	Staff responsible correctly identifies sources of IRR and can quantify these risks.	Credit union relies on staff who do not understand or are not familiar with IRR at the credit union (*e.g.* management cannot explain the impact on IRR of overstating core deposit premiums).
Procedures and assumptions of IRR measurement systems.	Credit union identifies reasonable procedures and supportable assumptions.	Management delegates assumptions to a third party and has no procedure to review the reasonableness of the assumptions.
Accountability of IRR management	Responsibility for managing IRR is specific and clearly delineated.	Responsibility for managing IRR is too broad, or unclear, or not recognized by management.
Transparency of changes in assumptions, methods and IRR tests.	Management requires clear disclosure of relevant changes in all material assumptions and methods.	Changes in assumptions are not tracked, or monitored or transparent to those evaluating efficacy of IRR system.

	Adequate	Inadequate
IRR Measurement and Monitoring:		
Reasonable and supportable assumptions	Credit union carefully evaluates all assumptions and assesses the sensitivity of results relative to each key assumption.	Results are highly dependent on key assumptions that have not been researched or demonstrated to be supportable (*e.g.* mortgage prepayments do not reflect extension risk and core deposit premiums overstate or do not indicate reasonable maturities).
Assumption changes from observed information.	All material changes in assumptions are based on tested internal data or reliable industry sources.	Assumptions are not tested and changes are not supported by any associated data on which the credit union relies.
Rigor of calculations and conformity of concepts.	Techniques used appropriately capture complexity of balance sheet instruments.	Methods to attribute cash flows, and rate sensitivities are based on incorrect techniques (*e.g.* misuse of statistical correlations).
Positions with uncertain maturities, rates and cash flows.	Activity is monitored on a regular basis in order to validate reasonableness of modeling assumptions.	Actual behavior is not monitored or compared to projected behavior.
Rigor of interest rate measures and tests ..	Measures and tests employed capture the material risks embedded in the credit union's balance sheet.	Measures and tests employed do not capture material risks embedded in the balance sheet (*e.g.* rate shocks do not trigger the embedded options in some products).
Components of IRR Measurement Methods:		
Chart of accounts	A sufficient number of accounts have been defined to capture key IRR characteristics inherent within each product.	Accounts/products with different IRR characteristics are modeled as one account/product (*e.g.* 15- and 30-year fixed-rate mortgages, with various coupons and prepayment behaviors).
Data aggregation	The level of data disaggregation is sufficient given the credit union's complexity and risk exposure (*e.g.* instrument level processing).	Data is combined for similar products with a wide range of variables, producing misleading weighted average terms (*e.g.* combining fixed-rate mortgages with coupons ranging from 4% to 8%, and modeling as a 6% mortgage).
Account attributes	Account set-up is appropriate to allow for the capture of key IRR characteristics.	Account set-up fails to identify key IRR characteristic (*e.g.* adjustable-rate mortgages are modeled without periodic and lifetime caps and floors).
Discounting methodology	Methodology used properly calculates the value of the asset or liability being modeled.	Methodology used does not accurately value assets or liabilities (*e.g.* discount rates or maturities or cash flows are incorrect in discounting calculations).
Assumptions	Credit union carefully evaluates all assumptions and assesses the sensitivity of results relative to each key assumption.	Results are highly dependent on key assumptions that have not been researched or demonstrated to be supportable (*e.g.* mortgage prepayments do not reflect extension risk and core deposit premiums overstate or do not indicate reasonable maturities).
Internal Controls:		
Internal assessment of IRR program	Staff are identified and have annually assessed policy and program to correct any weaknesses.	There is no specified review action for requiring periodic evaluation of IRR program effectiveness.
Compliance with policy	IRR program is evaluated semi-annually for any policy exceptions, including compliance with approved limits.	Exceptions to policy occur occasionally and these are not noted by the internal control process.
Timeliness and accuracy of reports	Reports that are routinely provided to management and the Board successfully communicate material IRR exposure of the credit union.	Reports fail to specify some material risks, and some scheduled reports are not produced.
Audit findings reported to board or supervisory committee.	IRR program deficiencies and policy exceptions are reported to the Board in accordance with the policy.	IRR program effectiveness is not part of audit review. No findings occur.
Decision-making and IRR:		
Use of IRR measurement results in operational decisions.	Measured IRR results form part of the credit union's ongoing business decisions and are substantive considerations routinely included in the business decision process.	IRR exposure discussion occurs only as deemed relevant in the annual strategic process.
Escalated use of results when IRR exposure is raised or approaching limits.	Procedure specifies review escalation at specific levels with increasing contingency triggers close to limits.	IRR results are secondary in addressing IRR contingencies. Credit union relies on ad hoc response driven by market and customer perceptions.
Application to reduce elevated levels of IRR.	Credit union utilizes IRR results to clearly define and formulate response to increased IRR levels.	IRR system results are not used to address balance structure, funding or pricing strategies.

NCUA acknowledges both the range of IRR exposures at credit unions, and the diverse means that they may use to accomplish an effective program to manage this risk. NCUA therefore does not stipulate specific quantitative standards or limits for the management of IRR applicable to all credit unions, and does not rely solely on the results of quantitative approaches to evaluate the effectiveness of IRR programs. Assumptions, measures and methods used by a credit union in light of its size, complexity and risk exposure determine the specific appropriate standard. However, NCUA strongly affirms the need for adequate practices for a program to effectively manage IRR. For example, policy limits on IRR exposure are not adequate if they allow a credit union to operate with an exposure that is unsafe or unsound, which means that the credit union may suffer material or significant losses under adverse circumstances as a result of this exposure. Credit unions that do not have a written IRR policy or that do not have an effective IRR program are out of compliance with § 741.3 of NCUA's regulation.

VIII. Additional Guidance for Large Credit Unions with Complex or High Risk Balance Sheets

FICUs with assets of $500 million or greater must obtain an annual audit of their financial statements performed in accordance with generally accepted accounting standards. 12 CFR 715.5, 715.6, 741.202. For purposes of data collection, NCUA also uses $500 million and above as its largest credit union asset range. In order to gather information and to monitor IRR exposure at larger credit unions as it relates to the NCUA insurance fund, NCUA will use this as the criterion for definition of large credit unions for purposes of the guidance. Given the increased exposure to the share insurance fund, NCUA encourages the following standards at large credit unions.

Responsible officials at large credit unions that are complex or high risk should fully understand all aspects of interest rate risk, including but not limited to the credit union's IRR assessment and potential directional changes in IRR exposures. For example, the credit union should consider the following:

- Policy which provides for the use of outside parties to validate the tests and limits commensurate with the risk exposure and complexity of the credit union;
- IRR measurements that provide compliance with policy limits as shown both by risks to earnings and net economic value of equity under a variety of defined and reasonable interest rate scenarios;
- The effect of changes in assumptions on IRR exposure results (*e.g.* the impact of slower or faster prepayments on earnings and economic value); or,
- Enhanced levels of separation between risk taking and risk assessment (*e.g.* assignment of resources to separate the investments function from IRR measurement, and IRR monitoring and oversight).

IX. Definitions

Glossary of terms

Basis risk: The risk to earnings and/or value due to a financial institution's holdings of multiple instruments, based on different indices that are imperfectly correlated.

Interest rate risk: The risk that changes in market rates will adversely affect a credit union's net economic value and/or earnings. Interest rate risk generally arises from a mismatch between the timing of cash flows from fixed rate instruments, and interest rate resets of variable rate instruments, on either side of the balance sheet. Thus, as interest rates change, earnings or net economic value may decline.

Option risk: The risk to earnings and/or value due to the effect on financial instruments of options associated with these instruments. Options are embedded when they are contractual within, or directly associated with, the instrument. An example of a contractual embedded option is a call option on an agency bond. An example of a behavioral embedded option is the right of a residential mortgage holder to vary prepayments on the mortgage through time, either by making additional premium payments, or by paying off the mortgage prior to maturity.

Repricing risk: The repricing of assets or liabilities following market changes can occur in different amounts and/or at different times. This risk can cause returns to vary.

Spread risk: The risk to earnings and/or value resulting from variations through time of the spread between assets or liabilities to an underlying index such as the Treasury curve.

Yield curve risk: The risk to earnings and/or value due to changes in the level or slope of underlying yield curves. Financial instruments can be sensitive to different points on the curve. This can cause returns to vary as yield curves change.

[FR Doc. 2011–6752 Filed 3–23–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0258; Directorate Identifier 2010–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER 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 the products listed above. This proposed AD would require installing two warning level indicator lights on each of the P1–3 and P3–1 instrument panels in the flight compartment. This proposed AD would also require revising the airplane flight manual to remove certain requirements of previous AD actions, and to advise the flightcrew of the following changes: Revised non-normal procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations. This proposed AD was prompted by a design change in the cabin altitude warning system that would address the identified unsafe condition. We are proposing this AD to prevent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 9, 2011.

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

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

For 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

(*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6472; *fax:* (425) 917–6590; *e-mail: jeffrey.w.palmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0258; Directorate Identifier 2010–NM–191–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Model 737 airplanes cabin altitude warning is an intermittent horn that sounds when cabin altitude exceeds 10,000 feet. The same intermittent warning horn sound is used by the takeoff configuration warning system (TCWS) to warn of an unsafe airplane configuration for takeoff. The TCWS warning functionality is inhibited by air/ground logic when the airplane is in flight. However, the Model 737 airplane's cabin altitude warning system design does not currently incorporate a dedicated means of positively identifying the warning horn as a cabin altitude warning or a takeoff configuration warning. There are approximately 25 known instances where flightcrews misinterpreted a valid cabin altitude warning as a takeoff configuration warning.

Failure of the flightcrew to recognize and react to a valid cabin altitude warning horn could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane. To address this unsafe condition, we issued the following ADs.

On July 7, 2003, we issued related AD 2003–14–08, Amendment 39–13227 (68 FR 41519, July 14, 2003). That AD applies to all Boeing Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 series airplanes. That AD requires revising the airplane flight manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when a cabin altitude warning occurs.

On June 15, 2006, we issued related AD 2006–13–13, Amendment 39–14666 (71 FR 35781, June 22, 2006). (A correction of that AD was published in the **Federal Register** on July 3, 2006 (71 FR 37980).) That AD applies to all Model 737 airplanes. That AD requires revising the AFM to advise the flightcrew of improved procedures for pre-flight setup of the cabin pressurization system, as well as improved procedures for interpreting and responding to the cabin altitude/configuration warning horn. That AD resulted from reports that airplanes had failed to pressurize, and that the flightcrews failed to react properly to the cabin altitude warning horn.

On October 24, 2008, we issued related AD 2008–23–07, Amendment 39–15728 (73 FR 66512, November 10, 2008), for all Model 737 airplanes. That AD requires revising the AFM to include a new flightcrew briefing that must be done before the first flight of the day and following any change in flightcrew members, and to advise the flightcrew of this additional briefing. That AD resulted from continuing reports that flightcrews have failed to recognize and react properly to the cabin altitude warning horn.

The preambles to AD 2006–13–13 and AD 2008–23–07 explain that the revisions to the AFM required by those ADs are considered to be interim action. The manufacturer had advised us that it was developing a design change in the cabin altitude warning system that would address the identified unsafe condition(s), and that once this design change was developed, approved, and available, the FAA might consider additional rulemaking. The manufacturer now has developed such a modification, and we have determined that further rulemaking is necessary; this proposed AD follows from that determination. We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by AFM revisions alone.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010. The service information describes procedures for installing two warning level indicator lights on each of the P1–3 and P3–1 instrument panels in the flight compartment. The installation includes installing a new circuit breaker and changing certain wire bundles.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Information." The proposed AD would also require revising the Limitations Section of the AFM to remove certain requirements of previous AD actions, and to advise the flightcrew of the following changes: Revised non-normal procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations.

Difference Between the Proposed AD and the Service Information

The effectivity in Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010, identifies Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes; however, it does not include all applicable serial numbers for airplanes that are subject to the identified unsafe condition. The actions for Group 1 airplanes, as specified in this service bulletin, must be done on additional airplanes, as identified in the applicability of this proposed AD.

Groups 8 through 21 airplanes are also included in the effectivity of the service bulletin; however, the actions required by this proposed AD would affect only Groups 1 through 7 airplanes. Therefore, concurrent actions, which specify installing a new P5–16 cabin altitude and rate of climb panel and cabin altitude and differential pressure indicator, would not be required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 650 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
Installation of warning indicator lights.	Between 31 and 64.	$85	Between $2,132 and $3,192.	Between $4,767 and $8,632.	650	Between $3,098,550 and $5,610,800.
AFM revision	2	85	$0	$170	650	$110,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD): Docket No. FAA–2011–0258; Directorate Identifier 2010–NM–191–AD.

Comments Due Date

(a) We must receive comments by May 9, 2011.

Affected ADs

(b) This AD affects the ADs identified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD. This AD does not supersede the requirements of these ADs.

(1) AD 2003–14–08, Amendment 39–13227.

(2) AD 2006–13–13, Amendment 39–14666.

(3) AD 2008–23–07, Amendment 39–15728.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Groups 1 through 7 airplanes, certificated in any category; identified in Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010; or having any serial number identified in table 1 of this AD.

TABLE 1—SERIAL NUMBERS

Serial Numbers
22940.
33546 through 33582 inclusive.
33717 through 33719 inclusive.
33758 through 33759 inclusive.
33794 through 33797 inclusive.
33804 through 33822 inclusive.

Subject

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

Unsafe Condition

(e) This AD was prompted by a design change in the cabin altitude warning system that would address the identified unsafe condition. The Federal Aviation Administration is issuing this AD to prevent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body) and consequent loss of control of the airplane.

Compliance

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

Installation

(g) For Groups 1 through 7 airplanes, as identified in Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010; and airplanes having any serial number identified in table 1 of this AD: Within 36 months after the effective date of this AD, install two warning level indicator lights on each of the P1–3 and P3–1 instrument panels in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010. The actions required for Group 1 airplanes also apply to the airplanes identified in table 1 of this AD.

Airplane Flight Manual (AFM) Revisions

(h) Before further flight after doing the installation required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) Revise the Limitations Section of the applicable Boeing 737 AFM by doing the following action: Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" added by AD 2008–23–07, Amendment 39–15728.

(2) Revise the Non-Normal Procedures Section of the applicable Boeing 737

AFM by doing the actions specified in paragraphs (h)(2)(i), (h)(2)(ii), (h)(2)(iii), and (h)(2)(iv) of this AD.

(i) Delete the procedure "WARNING HORN—CABIN ALTITUDE OR CONFIGURATION" added by AD 2006–13–13, Amendment 39–14666. If the title of this procedure has been changed according to FAA alternative method of compliance (AMOC) letter 130S–09–134a, dated April 28, 2009, delete the procedure that was approved according to this AMOC letter.

(ii) Delete the procedure entitled "CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION" added by AD 2003–14–08, Amendment 39–13227.

(iii) If the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)" is currently contained in the applicable Boeing 737 AFM, delete the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)."

(iv) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

Condition: The CABIN ALTITUDE warning light illuminates or the intermittent warning horn sounds in flight above 10,000 ft MSL.

RECALL	
Oxygen Masks and Regulators	ON, 100%.
Crew Communications	ESTABLISH.
REFERENCE	
Pressurization Mode Selector	MANUAL.
Outflow Valve Switch	CLOSE.
If Cabin Altitude is uncontrollable:	
Emergency Descent (If Required)	INITIATE.
Passenger Oxygen Switch	ON.
Thrust Levers	CLOSE.
Speed Brakes	FLIGHT DETENT.
Target Speed	VMO/MMO."

(3) Revise the Normal Procedures Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" procedure added by AD 2008–23–07.

(ii) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"For normal operations, the pressurization mode selector should be in AUTO prior to takeoff.

Note 1: When statements identical to those specified in paragraphs (h)(2)(iv) and (h)(3)(ii) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copies of this AD may be removed from the AFM.

Terminating Action for Affected ADs

(i) Accomplishment of the requirements of this AD terminates the requirements of the ADs identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD for only the airplanes identified in paragraph (c) of this AD.

(1) AD 2003–14–08: The requirements specified in Table 1 and Figure 1 of that AD.

(2) AD 2008–23–07: All requirements of that AD.

(3) AD 2006–13–13: All requirements of that AD.

Special Flight Permit

(j) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

Related Information

(l) For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6472; *fax:* (425) 917–6590; *e-mail: jeffrey.w.palmer@faa.gov.*

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

Issued in Renton, Washington, on March 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6931 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0257; Directorate Identifier 2010–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 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 the products listed above that would supersede an existing AD. 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:

* * * * *

The issue 10 of Airbus A318/A319/A320/A321 ALI [Airworthiness Limitation Items] Document and issue 2 of Airbus A319 Corporate Jet ALI Document introduce more restrictive maintenance requirements/airworthiness limitations. Failure to comply with this issue 10 constitutes an unsafe condition. * * *

* * * * *

The unsafe condition is fatigue cracking, accidental damage, or corrosion in principal structural elements and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 9, 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, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149; *tim.dulin@faa.gov.*

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–2011–0257; Directorate Identifier 2010–NM–122–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

On September 21, 2007, we issued AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007). That AD required operators of Airbus Model A318, A319, A320, and A321 series airplanes to revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, and for certain airplanes, Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. These actions were intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–20–05, we have determined that more restrictive limitations are necessary. We have also added Model A318–121 and –122 airplanes to the applicability. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0071R1, dated May 28, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The airworthiness limitations are currently included in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS).

The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently given in Airbus A318/A319/A320/A321 ALI Document reference AI/SE–M4/95A.0252/96 and Airbus A319 Corporate Jet ALI Document reference AI/SE–M2/95A.1038/99, which are approved by the European Aviation Safety Agency (EASA) and referenced in Airbus Airworthiness Limitations Section (ALS) Part 2.

The issue 10 of Airbus A318/A319/A320/A321 ALI Document and issue 2 of Airbus A319 Corporate Jet ALI Document introduce more restrictive maintenance requirements/airworthiness limitations. Failure to comply with this issue 10 constitutes an unsafe condition.

EASA AD 2010–0071 retains the requirements of EASA AD 2006–0165, which is superseded, and requires the implementation of more restrictive maintenance requirements/airworthiness limitations as specified in Airbus A318/A319/A320/A321 ALI Document reference AI/SE–M4/95A.0252/96 issue 10 and Airbus A319 Corporate Jet ALI Document reference AI/SE–M2/95A.1038/99.

This AD has been revised to clarify the special compliance times defined in Table 1 of this AD.

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

Relevant Service Information

Airbus has issued A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; and A319 Corporate Jet Airworthiness Limitation Items, Document reference AI/SE–M2/95A.1038/99, Issue 02, dated March 2009. A319 Corporate Jet Airworthiness Limitation Items, Document AI/SE–M2/95A.1038/99, Issue 02, dated March 2009, states that the limitations for the Model A319 corporate jets are specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 729 products of U.S. registry.

The actions that are required by AD 2007–20–05 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new 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 $61,965, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15215 (72 FR 56262, October 3, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2011–0257; Directorate Identifier 2010–NM–122–AD.

Comments Due Date

(a) We must receive comments by May 9, 2011.

Affected ADs

(b) This AD supersedes AD 2007–20–05, Amendment 39–15215.

Applicability

(c) This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 05: Wings.

Reason

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

* * * * *

The issue 10 of Airbus A318/A319/A320/A321 ALI [Airworthiness Limitation Items] Document and issue 2 of Airbus A319 Corporate Jet ALI Document introduce more restrictive maintenance requirements/airworthiness limitations. Failure to comply with this issue 10 constitutes an unsafe condition. * * *

* * * * *

The unsafe condition is fatigue cracking, accidental damage, or corrosion in principal structural elements and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2007–20–05

Revise Airworthiness Limitations Section (ALS) To Incorporate Safe Life ALIs

(g) For Airbus Model A318–111, and –112 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: Within 3 months after November 7, 2007 (the effective date of AD 2007–20–05), revise the ALS of the Instructions for Continued Airworthiness to incorporate Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus

A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006. Accomplish the actions in Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, at the times specified in Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, except as provided by paragraph (i) of this AD.

Revise ALS To Incorporate Damage-Tolerant ALIs

(h) For Airbus Model A318–111, and –112 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes, except Model A319 airplanes on which Airbus Modifications 28238, 28162, and 28342 have been incorporated in production: Within 14 days after November 7, 2007, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005 (approved by the EASA on February 7, 2006); Issue 08, dated March 2006 (approved by the EASA on January 4, 2007); or Issue 09, dated November 2006 (approved by the EASA on May 21, 2007). Accomplish the actions in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; at the times specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; as applicable; except as provided by paragraph (i) of this AD. Doing the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

Grace Period for New or More Restrictive Actions

(i) For Airbus Model A318–111, and –112 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: For any new of more restrictive life limit introduced with Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, replace the part at the time specified in Sub-part 1–2, "Life Limits," and Sub-part 1–3, "Demonstrated Fatigue Lives," of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, or within 6 months after November 7, 2007, whichever is later. For any new or more restrictive inspection introduced with Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; do the inspection at the time specified Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; as applicable; or within 6 months after November 7, 2007, whichever is later.

New Requirements of This AD

Revise ALS To Incorporate Damage-Tolerant ALIs With Revised Compliance Times

(j) Within 9 months after the effective date of this AD: Revise the maintenance program by incorporating all maintenance requirements and associated airworthiness limitations specified in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009. Comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009, except as provided by paragraph (k) of this AD. Doing the actions required by this paragraph terminates the requirements of paragraph (h) of this AD.

Special Compliance Times for Certain Tasks

(k) For new and more restrictive tasks introduced with Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009, as specified in Table 1 of this AD: The initial compliance time for doing the tasks is specified in Table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR NEW TASKS

Task	Applicability (as specified in the applicability column of the task)	Compliance time, whichever occurs later	
545102–01–6	Group 19–1A CFM, Group 19–1B CFM, and A320–200 CFM/IAE.	The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.	Within 2,000 flight cycles or 5,500 flight hours, after the effective date of this AD, whichever occurs first.
545102–01–7	A320–100	The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.	Within 2,000 flight cycles or 2,000 flight hours, after the effective date of this AD, whichever occurs first.
572050–01–1 or alternative task 572050-02–1.	Group 19–1A and Group 19–1B	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after the effective date of this AD.

TABLE 1—COMPLIANCE TIMES FOR NEW TASKS—Continued

572050–01–4 or alternative task 572050-02–4.	A320–200	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after the effective date of this AD.
572050–01–5 or alternative task 572050-02–5.	Group 21–1A	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE-M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after the effective date of this AD.
572050–01–7 or alternative task 572050-02–7.	A320–100	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE-M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after the effective date of this AD.
534132–01–1	A320 PRE 30748	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.	Within 100 days after the effective date of this AD, without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.
531118–01–1	A318 (except (A318–121 and –122), Group 19–1A, Group 19–1B, A320, A321.	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.	Within 100 days after the effective date of this AD, without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.
531118–01–1	A318–121 and –122	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.	Within 100 days after the effective date of this AD.

Note 2: New ALI Task 572050 refers to the outer wing dry bay and is comprised of extracts from three ALI Tasks: 572004, 572020 and 572053. The threshold of ALI Task 572050 for the whole dry bay area is that of the lowest threshold of the source ALI tasks, i.e., that of ALI Task 572053.

No Alternative Life Limits, Inspections, or Inspection Intervals

(l) After the actions specified in paragraphs (g) and (h) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as provided by paragraphs (i) and (m) of this AD, and except as required by paragraph (j) of this AD.

(m) After the actions specified in paragraph (j) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: EASA AD requires operators to comply with the limitations specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Airbus A319 Corporate Jet Airworthiness Limitation Items, Document AI/SE–M2/95A.1038/99, Issue 02, dated March 2009; as applicable. However,

this AD does not require incorporating Airbus A319 Corporate Jet Airworthiness Limitation Items, Document AI/SE–M2/95A.1038/99, Issue 02, dated March 2009, because that ALI only specifies compliance with the limitations specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.

Other FAA AD Provisions

(n) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch/ACO, send it to *Attn:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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.

Related Information

(o) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0071R1, dated May 28, 2010; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 08, dated March 2006; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 09, dated November 2006; and Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; for related information.

Issued in Renton, Washington, on March 15, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6932 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AC98

Risk Management Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: The Commodity Futures Trading Commission (Commission) is reopening the comment period for a proposed rule that would require derivatives clearing organizations (DCOs) to report end-of-day positions for each clearing member, by customer origin and house origin, and for customer origin, separately, the gross positions of each beneficial owner.

DATES: Submit comments on or before April 25, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AC98, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

Please submit comments by only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* Jacob Preiserowicz, Attorney-Advisor, 202–418–5432, *jpreiserowicz@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; and Anne C. Polaski, Special Counsel, 312–596–0575, *apolaski@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act (CEA)[4] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system. Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO.[5]

On December 16, 2010, the Commission approved for publication in the **Federal Register** proposed regulations which, among other things, would implement DCO Core Principle D (Risk Management) and would establish a related reporting requirement under Core Principle J (Reporting). More specifically, the Commission proposed § 39.13(g)(8)(i) to establish customer "gross margin" requirements, and proposed § 39.19(c)(1)(iv) to establish related daily reporting requirements. The proposed regulations were published for comment in the January 20, 2011 issue of the **Federal Register**.[6]

The **Federal Register** preamble explained that proposed § 39.13(g)(8)(i)

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's Web site at *http://www.cftc.gov.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] 7 U.S.C. 5b(c)(2).

[6] 76 FR 3698, Jan. 20, 2011.

would require a DCO to collect initial margin on a gross basis for each clearing member's customer account equal to the sum of the initial margin amounts that would be required by the DCO for each individual customer within that account if each individual customer were a clearing member. A DCO would not be permitted to net positions of different customers against one another, but it could collect initial margin for its clearing members' house accounts on a net basis.[7]

Related to this customer gross margin requirement, the preamble further explained as follows, that proposed § 39.19(c)(1)(iv) would require DCOs to report end-of-day positions for each clearing member, by customer origin and house origin, and for customer origin, separately, the gross positions of each beneficial owner:

> The Commission recently proposed a new § 39.19(c)(1)(iv) under which a DCO would be required, on a daily basis, to report the end-of-day positions for each clearing member, by origin. [footnote reference to 75 FR at 78195] In connection with the proposed § 39.13(g)(8)(i) requirement for DCOs to collect initial margin for customer accounts on a gross basis, the Commission is proposing to amend proposed § 39.19(c)(1)(iv) to additionally require a DCO, for the customer origin, to report the gross positions of each beneficial owner.[8]

It has come to the attention of the Commission that there was an omission in the **Federal Register** publication of the proposed rule text setting forth the requirement for end-of-day reporting of customer positions by the gross positions of each beneficial owner. The text of proposed § 39.19(c)(1)(iv), which read "End-of-day positions for each clearing member, by customer origin and house origin" should have read, "End-of-day positions for each clearing member, by customer origin and house origin; and for customer origin, separately, the gross positions of each beneficial owner."

In order to provide an adequate opportunity for comment on this reporting requirement, the Commission has determined to extend the comment period for proposed § 39.19(c)(1)(iv), as corrected elsewhere in this issue of the **Federal Register**, until April 25, 2011.

Issued in Washington, DC, on March 17, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–6972 Filed 3–23–11; 8:45 am]

BILLING CODE 6351–01–P

[7] 76 FR at 3706.

[8] *Id.*

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AC98

Risk Management Requirements for Derivatives Clearing Organizations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects incorrect text published in the **Federal Register** of January 20, 2011, regarding Risk Management Requirements for Derivatives Clearing Organizations.

FOR FURTHER INFORMATION CONTACT: Phyllis Dietz, 202–418–5449.

Correction

In proposed rule document 2011–690, in the issue of Thursday, January 20, 2011, on page 3726, in the first column, the text of proposed § 39.19(c)(1)(iv), which reads "End-of-day positions for each clearing member, by customer origin and house origin" should read, "End-of-day positions for each clearing member, by customer origin and house origin; and for customer origin, separately, the gross positions of each beneficial owner."

Dated: March 18, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–6976 Filed 3–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123 and 129

[Public Notice: 7386]

RIN 1400–AC74

Amendment to the International Traffic in Arms Regulations: Electronic Payment of Registration Fees; 60-Day Notice of the Proposed Statement of Registration Information Collection; Correction

AGENCY: Department of State.

ACTION: Proposed rule; correction.

SUMMARY: The Department of State published a proposed rule in the **Federal Register** on February 24, 2011, concerning a proposed "DS–2032 Statement of Registration" Information Collection. The proposed rule contained incorrect addresses for the submission of public comments concerning the information collection.

FOR FURTHER INFORMATION CONTACT: Tanya Phillips, 202–632–2879

Correction

In the proposed rule FR Doc. 2011–3878 of February 24, 2011, page 10293, in the second column, correct lines 47 through 71 to read as follows:

"Comments from the public on the information collection may be submitted until May 23, 2011.

Comments should be sent by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, "Electronic Payment of Registration Fees."
- *Mail:* PM/DDTC, SA–1, H1200, Directorate of Defense Trade Controls, Office of Defense Trade Controls Compliance, ATTN: Electronic Payment of Registration Fees, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- *Internet:* View and comment on the original notice by searching for its RIN (1400–AC74) on the U.S. Government regulations Web site at *http://www.regulations.gov*."

Dated: March 17, 2011.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2011–6977 Filed 3–23–11; 8:45 am]

BILLING CODE 4710–25–P

POSTAL SERVICE

39 CFR Parts 111 and 121

Combined Mailings of Standard Mail and Periodicals Flats

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 705.14 and 708.1.1 to provide a new option for mailers to combine Standard Mail® flats and Periodicals flats within the same bundle, when placed on pallets, and to combine bundles of Standard Mail flats and bundles of Periodicals flats on the same pallet. The Postal Service also proposes to revise section 121.2 of title 39, Code of Federal Regulations to reflect that the Standard Mail service standards apply to all Periodicals flats pieces entered in such combined mailings.

DATES: We must receive your comments on or before April 25, 2011.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 4446,

Washington, DC 20260–4446. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "Standard Mail and Periodicals Combined Mailings." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Jonathan Leon at 202–268–7443, or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to provide a new option for mailers to combine Standard Mail flats and Periodicals flats, when bundled and placed on pallets. Mailers using this option may combine different-class mailpieces within the same bundle (comail), or combine separate same-class bundles (of different classes) on the same pallet (copalletize) to maximize presorting or to qualify for deeper destination entry discounts. All mailpieces prepared under this option will be required to be bundled and placed on pallets. Combining mailings enhances operational efficiencies within postal processing by allowing mailers to place mailpieces in bundles on pallets that might have been placed in sacks if prepared separately.

The Postal Service originally provided notice of this new option on February 28, 2011, through a final rule, **Federal Register** notice (10757–10761). In consideration of concerns expressed by members of the mailing community, the Postal Service has elected to publish this proposed rule in lieu of the February 28, 2011 final rule. Interested individuals are encouraged to provide comments as provided above.

This new option will not change current DMM content and eligibility standards applicable to Periodicals and Standard Mail. Mailers using this option will continue to be required to meet the minimum volume standards for Standard Mail of 200 pieces or 50 pounds. Periodicals publications must be authorized or have a pending authorization to mail at Periodicals prices. The current processes that identify and isolate Periodicals origin mixed area distribution center (OMX) mailpieces, for integration into the First-Class Mail® mailstream, will not be available when combining Standard Mail flats and Periodicals flats on pallets. All mailpieces included in a combined mailing of Standard Mail and Periodicals flats on pallets must be machinable in accordance with DMM 301.3.0.

Mailers wishing to combine Standard Mail and Periodicals flats under this option will be required to submit a request for authorization, in writing, to the Manager, Business Mailer Support (*see* DMM 608.8.1 for contact information).

All mailpieces included in a combined mailing of Periodicals flats and Standard Mail flats will be required to meet the standards for a full-service automation mailing. Intelligent Mail® barcodes placed on mailpieces prepared under this program will be required to include Service Type Identifiers appropriate for the class of mail of the individual mailpiece.

Participating mailers will be required to present standardized electronic mailing documentation for each combined mailing, and at the time of mailing, the following additional documentation:

- An edition or version summary for all pieces in the mailing.
- A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.
- A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined mailing. Mailers may provide a single consolidated postage statement and postage statement register of all Standard Mail mailings if they are itemized.
- A register of Forms 8125, *Plant Verified Drop Shipment (PVDS) Verification and Clearance,* (PS 8125C) that consolidates all of the mailings to the destinations where the mail is entered.

When using this option, postage on all Standard Mail pieces must be paid through a permit imprint using a special postage payment system at the Post Office™ serving the mailer.

Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account. Participating mailers will be required to apportion the Periodicals bundle charge based on the number of Periodicals copies in the bundles and container charge based on the weight of the Periodicals portion of the container.

Mailers combining Standard Mail flats and Periodicals flats will not have the option to form ADC pallets or to dropship to ADCs. As a result, Periodicals publications included in combined mailings will not have access to DADC prices. Other specific prices for Periodicals flats in a combined mailing will be assessed as follows:

- The bundle prices applicable to the ADC container level will be applied to the ASF/NDC container level.
- The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet level.
- The bundle price applicable to the ADC bundle placed on the ADC container level will apply to mixed ADC bundles placed on mixed NDC pallets.
- The container price applicable to the ADC pallet level will also apply to the mixed NDC pallet level.

Standard Mail flats and Periodicals flats combined on pallets will be processed as Standard Mail; and the Periodicals mailpieces included within these combined mailings may receive deferred handling. Periodicals mailpieces included within mailings of combined Standard Mail flats and Periodicals flats will be subject to the USPS service standards applicable to Standard Mail. These mailings must also be identified as Standard Mail when scheduling dropship appointments in the Facility Access and Shipment (FAST®) system.

Mailers combining Standard Mail flats and Periodicals flats on pallets must populate field 10, "*Product or Publication Title or Names,*" of PS Form 8125 and/or field 11b, "*Product Name/ID,*" of PS Form 8125C with "MIX COMAIL" when preparing dropship documentation for these mailings.

Any mixed NDC pallets prepared under this program will be required to be entered at the NDC servicing the 3-digit ZIP Code™ of the entry Post Office for the mailer's plant. Mailers combining Standard Mail flats and Periodicals flats on pallets may reallocate bundles under DMM 705.8.11 and 705.8.13.

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats will be required to be identified as containing mixed classes through the use of an optional endorsement line (OEL) in accordance with the proposed standards.

Mailers preparing combined mailings of Standard Mail flats and Periodicals flats will be required to provide a written notification to each participating Periodicals publisher that describes the combined mailing process and the potential for pieces to receive deferred USPS handling. These notifications, signed and dated by the Periodicals publisher, will be required to be retained by the mailer and must be available for review by the USPS upon request.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C.

553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

The Postal Service also proposes to amend 39 CFR 121.2 by adding a new item c to describe the USPS processing of Periodicals mailpieces included in combined mailings of Standard Mail flats and Periodicals flats, and specifying that Periodicals mailpieces included in these mailings will be assigned the service standards applicable to Standard Mail pieces.

List of Subjects in 39 CFR Parts 111 and 121

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Services

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.5 General Preparation

8.5.1 Presort

[Revise the fifth sentence of 8.5.1 as follows:]

* * * Except as described in 15.1i, bundles must not be placed on mixed ADC or mixed NDC pallets. * * *

* * * * *

[Renumber current 15.0 through 23.0 as new 16.0 through 24.0 and add new 15.0 as follows:]

15.0 Combining Standard Mail Flats and Periodicals Flats

15.1 Basic Standards

Authorized mailers may combine Standard Mail flats and Periodicals flats in a single mailing as follows:

a. Each mailpiece must meet the standards in 340 for Standard Mail and 707 for Periodicals. Periodicals publications must be authorized or pending original or additional entry at the office of mailing.

b. Mailers must prepare pieces in bundles on pallets.

c. Except for residual volume placed on a mixed NDC pallet under 15.4.1j, all pallets meeting minimum volume requirements must be dropshipped to the appropriate DNDC or DSCF.

d. Unless authorized by the local processing and distribution manager, any mixed NDC pallets prepared under this program must be entered at the NDC servicing the 3-digit ZIP Code of the entry Post Office for the mailer's plant.

e. All pieces included in a combined mailing of Standard Mail and Periodicals must meet the requirements for full-service automation, as described in 23.0.

f. Mailers must pay all annual mailing fees at the office of mailing.

g. Each mailing must include at least 200 pieces or 50 pounds of Standard Mail.

h. All mailpieces combined within bundles, in accordance with 14.0, must be similar in size so as to create stable bundles. Bundles placed on pallets under this provision must be prepared to create stable pallets.

i. When residual pieces are included in a combined mailing of Standard Mail flats and Periodicals flats on pallets, these pieces must be placed on mixed NDC pallets and entered at the NDC serving the mailer's plant.

j. All mailpieces included in a combined mailing of Standard Mail flats and Periodicals flats on pallets must be machinable in accordance with 301.3.0.

15.1.1 Service Objectives

The Postal Service handles combined mailings of Standard Mail flats and Periodicals flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the USPS service standards applicable to Standard Mail.

15.1.2 Postage Payment

Postage for all Standard Mail pieces must be paid with permit imprint using a special postage payment system in 2.0 through 4.0 at the Post Office serving the mailer's plant. Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account.

15.1.3 Documentation

Mailers must present standardized electronic documentation according to 708.1.0. This documentation must accurately reflect the final piece count in the combined mailing. In addition, mailers must provide:

a. An edition or version summary for all pieces in the mailing. The summary may be part of the USPS qualification report and must include version ID, product or edition code, class of mail, piece weight of each version, and number of pieces by version; and for Periodicals, USPS or permit number (or pending permit number), issue date, and advertising percentage.

b. A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.

c. A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined mailing. Mailers may provide a single consolidated postage statement and a consolidated postage statement register of all Standard Mail mailings if they are itemized.

d. A register of Forms 8125 (or PS 8125C) that consolidates all of the mailings into the destinations where the mail is dropshipped.

e. Documentation to support zones and bundle totals, if requested.

f. When requested, a copy of a notification document signed and dated by the Periodicals publisher, acknowledging their participation in a combined mailing of Standard Mail and Periodicals and the potential for their mailpieces to receive deferred USPS handling.

g. Any additional documentation to support postage payment system records, if requested.

15.1.4 Authorization

A mailer must submit a written request to the manager, Business Mailer Support (*see* 608.8.1 for address) to combine mailings of Standard Mail flats and Periodicals flats. The request must show the mailer's name and address, the mailing office, evidence of authorization to mail using a special postage payment system under 2.0 through 4.0, procedures for combining the mailing, the expected date of first mailing, quality control procedures, and a sample of all supporting mailing documentation, including postage statements and the USPS Qualification

Report. Business Mailer Support will review the documentation and provide written authorization. A mailer may terminate an authorization at any time by written notice to the postmaster of the office serving the mailer's location. Business Mailer Support may terminate an authorization by written notice if the mailer does not meet the standards.

15.1.5 Price Eligibility

Apply prices based on the standards in 340 for Standard Mail. Prices are based on the standards in 707 for Periodicals and as modified under the standards for this program.

15.1.6 Piece Prices

Apply piece prices based on the bundle level. Pieces contained within mixed class bundles may claim prices based on the presort level of the bundle.

15.1.7 Applying the Periodicals Bundle Charge

Apply bundle charges as follows:

a. Calculate the percentage of Periodicals copies in a bundle.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable bundle charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each in the bundle.

15.1.8 Applying the Periodicals Container Charge

Apply container charges to pallets as follows:

a. Calculate the percentage of the weight of Periodicals copies on each pallet.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable container charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each on the pallet.

15.1.9 Other Periodicals Pricing

Other prices for Periodicals flats in a combined mailing of Standard Mail and Periodicals flats on pallets will be assessed as follows:

a. The bundle prices applicable to the ADC container level will be applied to the ASF/NDC container levels.

b. The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet levels.

15.1.10 Bundle Reallocation To Protect the SCF or NDC Pallet

Mailers may reallocate bundles under 8.11 or 8.13 to protect the SCF or NDC pallet.

15.2 Combining Standard Mail Flats and Periodicals Flats in the Same Bundle

15.2.1 Bundling and Labeling

Standard Mail flats and Periodicals flats may be combined in carrier route, 5-digit (scheme), 3-digit, ADC, and Mixed ADC bundles when prepared according to 707.19.0 and these additional standards:

a. Each bundle containing combined Standard Mail flats and Periodicals flats must contain a minimum of 10 pieces. Bundles of only Standard Mail flats must contain a minimum of 10 pieces. Bundles of only Periodicals flats must contain a minimum of 6 pieces.

b. Firm bundles must contain only Periodicals flats.

15.2.2 Mailpiece and Bundle Identification

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with the standards in 708.7.1.8.

15.2.3 Pallet Presort and Labeling

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals mailpieces, except as allowed under 8.5.3. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 14.4.1.

15.3 Combining Bundles of Standard Mail Flats and Periodicals Flats on the Same Pallet

15.3.1 Bundling and Labeling

Mailers must prepare bundles according to the standards for the class of mail and the prices claimed.

15.3.2 Mailpiece and Bundle Identification

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with standards in 708.7.1.8.

15.3.3 Pallet Presort and Labeling

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals, except as allowed under 8.5.3. When reallocating bundles under 8.11 or 8.12, mailers do not have to achieve the finest pallet presort level possible. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 14.4.1.

15.4 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

When combining Standard Mail and Periodicals flats within the same bundle or combining bundles of Standard Mail flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. Preparation, sequence and labeling:

a. *Merged 5-digit scheme, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 8.10.2d. Labeling:

1. Line 1: L001.

2. Line 2: "STD/PER FLTS CR/5D;" followed by "SCHEME" (or "SCH"); followed by "MIX COMAIL."

b. *5-digit scheme carrier routes, required.* Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 2.2e. Labeling:

1. Line 1: L001.

2. Line 2: "STD/PER FLTS"; followed by "CARRIER ROUTES" (or "CR–RTS"); followed by "SCHEME" (or "SCH"); followed by "MIX COMAIL."

c. *5-digit carrier routes, required.* Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS"; followed by "CR/5D"; followed by "MIX COMAIL."

d. *Merged 5-digit, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS"; followed by "CR/5D"; followed by "MIX COMAIL."

e. *5-digit, required.* Pallet must contain only mail for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for automation flats only under 301.3.0). 5-digit scheme bundles are assigned to 5-digit pallets according to the OEL "label to" 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS 5D"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

f. *3-digit, optional,* but not available for bundles for 3-digit ZIP Code prefixes marked "N" in L002. Pallet may contain mail for the same 3-digit ZIP Code or the same 3-digit scheme under L008 (for automation-compatible flats only under 301.3.0). Three-digit scheme bundles are assigned to pallets according to the OEL "label to" 3-digit ZIP Code in L008. Labeling:

1. Line 1: L002, Column A.

2. Line 2: "STD/PER FLTS 3D"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

g. *SCF, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L005. Labeling:

1. Line 1: L002, Column C.

2. Line 2: "STD/PER FLTS SCF"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

h. *ASF, required unless bundle reallocation used under 2.3.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L602. ADC bundles are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L602.

2. Line 2: "STD/PER FLTS NDC"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

i. *NDC, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L601. ADC bundles are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L601.

2. Line 2: "STD/PER FLTS NDC"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

j. *Mixed NDC, required, no minimum.* Pallet may contain carrier route or automation mail. Pallet includes MXD ADC bundles, prepared according to the "label to" ZIP in L009, as appropriate. Unless authorized by the processing and distribution manager, pallet must be entered at the NDC serving the 3-digit ZIP Code of the entry Post Office. Labeling:

1. Line 1: "MXD" followed by the information in L601, for the NDC serving the 3-digit ZIP Code prefix of the entry Post Office.

2. Line 2: "STD/PER FLTS;" followed by "BARCODED" (or "BC"); followed by "WKG;" followed by "MIX COMAIL."

* * * * *

708 Technical Specifications

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7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

Sortation Level	OEL Example

* * * * *

[Revise Exhibit 7.1.1 to add a new last section to describe additional OEL human-readable text for use with combined mailings of Standard Mail and Periodicals flats as follows:]

Additional required human-readable text for use with combined mailings of Standard Mail and Periodicals flats:

5-Digit Scheme (and other sortation levels as appropriate) ..... * * * * * * * * SCH 5-DIGIT 12345 MIX COMAIL

* * * * *

[Add a new 7.1.8 to described new OEL requirements for mailers combining Standard Mail and Periodicals flats as follows:]

7.1.8 Required OEL Use in Combined Mailings of Standard Mail and Periodicals Flats

Mailers authorized to combine Standard Mail flats and Periodicals flats, under 705.15, must apply an OEL identifying the presort level of the bundle and other applicable information to each mailpiece as specified in 7.1 and the following additional standards:

a. Each OEL must contain the format elements described in 7.2 and must include a "MIX COMAIL" human-readable text, as its most right-justified element.

b. Mailpieces may include LOT information, in accordance with 7.1.7, only when there is sufficient space for the human-readable text in item a and all other required information.

* * * * *

PART 121—[AMENDED]

3. The authority citation for 39 CFR Part 121 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

4. Amend § 121.2 to include a new paragraph (c) to read as follows:

§ 121.2 Periodicals

* * * * *

c. Combined Periodicals/Standard Mail mailing. The Postal Service handles combined mailings of Periodicals flats and Standard Mail flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the service standards applicable to Standard Mail in section 121.3.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 and 121 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–6912 Filed 3–23–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–0004–201109; FRL–9285–9]

Approval and Promulgation of Implementation Plans; South Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to convert a conditional approval of a revision to the South Carolina State Implementation Plan (SIP) to a full approval. South Carolina, through the South Carolina Department of Health and Environment Control (SC DHEC), Bureau of Air Quality, submitted a SIP revision on April 14, 2009, in response to the conditional approval of its New Source Review (NSR) permitting program. South Carolina's April 14, 2009, SIP revision consists of adopting requirements of the Nonattainment New Source Review (NNSR) construction permit program under the Clean Air Act (CAA or Act). This program affects major stationary sources in South Carolina that are subject to or potentially subject to the NNSR construction permit program. As required by the conditional approval, South Carolina's April 14, 2009, SIP revision includes requirements for calculating emissions reductions that will be used for offsets and ensures those reductions are surplus to other Federal requirements. EPA is proposing approval of the April 14, 2009, SIP revision because the Agency has determined that South Carolina addresses the conditions identified in the conditional approval, and is in accordance with the CAA.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–0004, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2005–0004, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2005–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the South Carolina SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; e-mail address: *adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?
II. Why is EPA proposing this action?
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. What action is EPA proposing?

On April 14, 2009, the State of South Carolina, through SC DHEC, submitted a revision to the South Carolina SIP, which consists of changes to the South Carolina Air Pollution Control Regulations and Standards (hereafter referred to as "South Carolina Regulations"). Specifically, the proposed SIP revision includes changes to South Carolina Regulation 61–62.5, Standard No. 7.1 entitled "Nonattainment New Source Review." SC DHEC submitted this SIP revision in response to EPA's June 2, 2008 (73 FR 31368), rule which conditionally approved South Carolina's NNSR program.

South Carolina's April 14, 2009, SIP revision also includes the removal of provisions which existed in South Carolina regulations that relate to requirements that were vacated from the Federal program by the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) on June 24, 2005. The provisions vacated from the Federal rules pertain to pollution control projects (PCPs) and clean units (CUs). Since these

provisions were not approved into South Carolina's SIP, no action is required by EPA.[1] As a result of the removal of the CU and PCP provisions, the SIP revision also includes minor administrative reference changes at Regulation 61–62.5, Standard No. 7—Prevention of Significant Deterioration (PSD) and Standard No. 7.1 Nonattainment New Source Review which are now being proposed for inclusion in the SIP.

In addition to changes to address the conditional approval of South Carolina's NNSR program and the aforementioned administrative changes, South Carolina's April 14, 2009, SIP revision also includes provisions in Regulation 61–62.5, Standards No. 7 and 7.1 to exclude facilities that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule") from the definition of "chemical process plants" in the major NSR permitting program. *See* 72 FR 24060 (May 1, 2007). At this time, EPA is not proposing to take action on South Carolina's changes to its NSR program to incorporate the provisions of the Ethanol Rule.

II. Why is EPA proposing this action?

South Carolina Regulation 61–62.5, Standard No. 7.1 was submitted to EPA by SC DHEC on July 1, 2005, for inclusion in the South Carolina SIP. This regulation relates to the South Carolina's NNSR permit program. Revisions to Regulation 61–62.5, Standard No. 7.1 became State-effective on June 24, 2005. EPA proposed to conditionally approve South Carolina's NNSR rules on September 12, 2007 (72 FR 52031). EPA did not receive any comments on the proposal. EPA finalized its conditional approval of Regulation 61–62.5, Standards No. 7.1 into the South Carolina SIP on June 2, 2008 (73 FR 31368). As part of the conditional approval, South Carolina had twelve months from the June 2, 2008, final conditional approval to submit changes to its NNSR program as described herein to be consistent with EPA Federal regulations.

On April 14, 2009, SC DHEC submitted a revision to the SIP, incorporating the corrections required by EPA in the conditional approval. Specifically, South Carolina revised Regulation 61–62.5, Standard No. 7.1 to include a methodology for calculating emission reductions to be used as offsets that include a baseline for determining credit for emissions offsets that meet the requirements set out in 40 CFR 51.165(a)(3)(i) and Appendix S, section IV.C. This particular issue was highlighted as a basis for the conditional approval in the June 2, 2008 **Federal Register**. *See* 73 FR 31369–31370. The emission offsets provisions also specify that the reductions must be surplus and cannot be used for offsets if they are otherwise required by the South Carolina SIP or other Federal standards, such as New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants, including the Maximum Achievable Control Technology standards. EPA has determined that South Carolina's April 14, 2009, SIP revision satisfies the conditions listed in EPA's June 2, 2008, conditional approval, and today is proposing to convert its prior conditional approval to full approval. *See* 73 FR 31368.

III. Proposed Action

EPA is proposing to convert a conditional approval of a July 1, 2005, revision to the South Carolina SIP regarding requirements for the State's NNSR construction permit program to a full approval. South Carolina's April 14, 2009, SIP revision consists of changes to South Carolina Regulation 61–62.5, Standard No. 7.1 entitled "Nonattainment New Source Review." SC DHEC submitted the April 14, 2009, SIP revision in response to EPA's June 2, 2008 (73 FR 31368), rule, which conditionally approved South Carolina's NNSR program as provided in the State's July 1, 2005, SIP revision. SC DHEC has satisfied the conditions listed in EPA's conditional approval. Therefore, EPA is proposing to convert its conditional approval of South Carolina's July 1, 2005, SIP revision to a full approval. The April 14, 2009, SIP revision satisfies the conditions of EPA's conditional approval of South Carolina's July 1, 2005 SIP revision, and is are consistent with Federal regulations and in accordance with the CAA. In addition, EPA is proposing to approve minor administrative reference changes at South Carolina Regulation 61–62.5 Standards No. 7 and 7.1 as a result of the removal of CU and PCP provisions.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

[1] On June 2, 2008 (73 FR 31368), EPA disapproved provisions in South Carolina's PSD and NNSR programs relating to PCP and CUs. Therefore, these provisions were not approved into South Carolina's SIP.

Dated: March 16, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–6975 Filed 3–23–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–XV30

Endangered and Threatened Species; Extension of Public Comment Period on Proposed Range Extension for Coho Salmon South of San Francisco Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, NMFS, are extending the date by which public comments are due concerning the proposed rule to extend the southern boundary of the endangered Central California Coast (CCC) coho salmon Evolutionarily Significant Unit (ESU) southward from its current boundary at the San Lorenzo River to include Soquel and Aptos Creeks in Santa Cruz County, California. On February 4, 2011, we published a proposed rule in the **Federal Register** to extend the southern boundary of this ESU and announced a public comment period to end on April 5, 2011. Today we extend the public comment period to June 6, 2011.

DATES: The deadline for receipt of comments on the proposed rule published on February 4, 2011, (76 FR 6383), is extended from April 5, 2011, to June 6, 2011, at 5 p.m. Pacific Daylight Time.

ADDRESSES: You may submit comments on the proposed range extension, identified by the RIN 0648–XV30, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Protected Resources Division, *Attn:* Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.
- *Fax:* (562) 980–4027; *Attn:* Craig Wingert.

All comments received are a part of the public record. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We 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.

A copy of our 12-month finding and proposed range extension and other relevant information may be obtained by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 or from the Internet at *http://swr.nmfs.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS Southwest Region, (562) 980–4021; or Dwayne Meadows, NMFS Office of Protected Resources, Silver Spring, MD, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2011 (76 FR 6383), we published a proposed rule to extend the boundary of the endangered CCC coho salmon ESU from its current boundary at the San Lorenzo River southward to include Soquel and Aptos Creeks which are located in Santa Cruz County, CA. The proposed rule also concluded that this redefined ESU continues to be endangered.

We received one request to extend the current public comment period on the rule to accommodate review of the proposed rule and all the supporting documentation. We have considered this request and conclude that a 60-day extension is appropriate and will not delay this rulemaking process. Accordingly, we are extending the public comment period to June 6, 2011, to allow additional time for public comment.

Authority: 16 U.S.C. 1533 *et seq.*

Dated: March 18, 2011.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–7019 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BA71

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan

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 (Council) has submitted Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 15), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 15, which was developed primarily to implement annual catch limits (ACLs) and accountability measures (AMs) to bring the Scallop FMP into compliance with new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Amendment 15 includes additional measures recommended by the Council, including an adjustment to the overfishing definition, modification of the essential fish habitat (EFH) closed areas under the Scallop FMP, adjustments to measures for the Limited Access General Category fishery, adjustments to the scallop research set aside program, and additions to the list of measures that can be adjusted by framework adjustments.

DATES: Comments must be received by 5 p.m., Eastern Standard Time, on May 23, 2011.

ADDRESSES: An FEIS was prepared for Amendment 15 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 15, including the FEIS and the IRFA, are available from Paul J. Howard, Executive Director, New England Fishery Management 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–BA71, 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: Peter Christopher.

• *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 Scallop Amendment 15."

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, phone 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: *Background:* In January 2007, the MSA was reauthorized and included a new provision requiring each FMP to use ACLs to prevent overfishing, including measures to ensure accountability should the ACLs be exceeded. For fishery resources that were determined to be overfished, the reauthorized MSA required that such measures must be implemented by 2010. For fishery resources that were not overfished, the reauthorized MSA required that such measures must be implemented by 2011. Scallop fishery management measures to comply with the reauthorized MSA's ACL and AM requirements were required for 2011 because the scallop resource is not overfished. To meet this requirement, the Council initiated development of Amendment 15 when, on March 5, 2008, it published a Notice of Intent to develop Amendment 15 (73 FR 11888) and prepare and EIS to analyze the impacts of the proposed management alternatives. The Council intended that Amendment 15 would address three goals: (1) Bring the Scallop FMP into compliance with new requirements of the re-authorized MSA; (2) address excess capacity in the limited access scallop fishery; and (3) consider measures to adjust several aspects of the overall program to make the scallop management plan more effective. Following the public comment period that ended on August 23, 2010, the Council adopted Amendment 15 on September 29, 2010. The Council voted to exclude permit stacking and leasing alternatives that were designed to address excess capacity after considering extensive written and oral public comment on the measures. Ultimately the Council rejected these measures due to concerns that the measures would have unacceptable negative economic and social impacts on the scallop fleet and fishing communities. As adopted by the Council, Amendment 15 includes the following measures:

• An acceptable biological catch (ABC) control rule that would set ABC at a level that has a 25-percent probability of exceeding the overfishing limit to account for scientific uncertainty in the assessment of the status of the scallop resource;

• Incidental and Northern Gulf of Maine (NGOM) catch limits;

• Separate scallop ACLs and AMs for the limited access and LAGC fleets;

• An annual catch target for the limited access fleet;

• A "Limited Access Disclaimer" that would retract an impending limited access fleet AM if the fishery has not exceeded the fishing mortality rate associated with ABC, and an associated provision to re-allocate catch to the LAGC fleet if the Disclaimer provision is implemented;

• A sub-ACL for yellowtail flounder coordinated with the Council's Northeast (NE) Multispecies FMP and AMs for the scallop fishery if the scallop fishery's yellowtail flounder sub-ACL is exceeded;

• Modification of the overfishing definition for scallops to make it more compatible with rotational area management and to be consistent with the most recent formal scallop resource stock assessment;

• An increase in the possession limit for limited access general category (LAGC) vessels from 400 to 600 lb per trip;

• An allowance for carryover of unused individual fishing quota (IFQ) for LAGC vessels;

• A provision to enable LAGC vessel owners to permanently transfer all or some IFQ separate from the vessel's LAGC permit;

• Revision of the essential fish habitat (EFH) closures under the Scallop FMP to make them consistent with EFH closed areas under the NE Multispecies FMP;

• Inclusion of third year default management measures under the biennial framework adjustment process;

• Additions to the list of frameworkable measures; and

• Several changes to the scallop research set aside program.

Amendment 15 would establish the mechanism for implementing ACLs and AMs, which would be the basis for scallop fishery specifications, including days-at-sea, access area trip allocations, and IFQs. Amendment 15 does not include actual limits and fishery specifications. These specifications would be established under Framework 22 to the FMP for fishing years 2011, 2012, and 2013. Framework 22 has been adopted and submitted by the Council for NMFS review.

Public comments are being solicited on Amendment 15 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 15 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 15 to be considered in the approval/disapproval decision on the amendment. All comments received by May 23, 2011, whether specifically directed to Amendment 15 or the proposed rule for Amendment 15, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 15. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–7025 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 57
Thursday, March 24, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 21, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

OMB Control Number: 0581–0093.

Summary of Collection: The U.S. Department of Agriculture has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, peanuts, popcorn, pork, potatoes, sorghum, soybeans, and watermelons. Various Acts authorizes these programs to carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. The Agricultural Marketing Service (AMS) has the responsibility to appoint board members and approve the boards' budgets, plans, and projects and for foreign projects, the Foreign Agricultural Service. AMS' objective in carrying out this responsibility is to assure the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by enabling legislation; and (3) the board's administration of the programs conforms to USDA policy.

Need and Use of the Information: The boards administer the various programs utilizing a variety of forms to carry out their responsibilities. Only authorized employees of the various boards and USDA employees will use the information collected. If this data were collected less frequently, (1) it would hinder data needed to collect and refund assessments in a timely manner and result in delayed or even lost revenue; (2) boards would be unable to carry out the responsibilities of their respective Acts; and (3) requiring reports less frequently than monthly would impose additional record keeping requirements.

Description of Respondents: Business or other for profit, Farms.

Number of Respondents: 324,330.

Frequency of Responses: Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually; Record-keeping;

Total Burden Hours: 167,211.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2011–6963 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forestry Research Advisory Council Charter Renewal

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of the Forestry Research Advisory Council charter renewal.

SUMMARY: The Secretary of Agriculture has renewed the charter of the Forestry Research Advisory Council (FRAC), a statutory committee established in accordance with the Agriculture and Food Act of 1981, Section 1441(c). Chartered under the Federal Advisory Committee Act, the Council provides advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, et seq.), commonly known as the McIntire-Stennis Act of 1962. The Council also provides advice relative to the Forest Service research program, authorized by the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat.353, as amended; 16 U.S.C. 1600 (note)). FRAC serves as a joint council between the Forest Service and Cooperative State Research, Education, and Extension Service, agencies within USDA.

DATES: The charter renewal was effective February 14, 2011. As provided by law, the charter will expire 24 months from the date of renewal.

FOR FURTHER INFORMATION CONTACT: Daina Dravnieks Apple, Office of the Deputy Chief, Research and Devlopment, Forest Service, USDA, 202–205–1665. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has renewed the charter of the Forestry Research Advisory Council (FRAC). The

purpose of FRAC is to advise the Secretary of Agriculture on regional and national research planning and coordination of forestry research within the Federal and State agencies, forestry schools, forest industries, and non-governmental organizations. The Council may fulfill its responsibility to consult on a periodic or regular basis on apportionment of funds. The Council consists of a total of 20 members. The Chair, or designated employee, serves as the Designated Federal Officer under sections 10(e) and (f) of the Federal Advisory Act (5 U.S.C. App.). Any vacancies on the Council will be filled in the manner in which the original appointment was made.

A meeting notice will be published in the **Federal Register** 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a "public forum" that may offer 5–10 minutes for participants to present comments to the advisory committee. The Chair of the given Council ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Equal opportunity practices will be followed in all appointments to the advisory committee. To ensure that the recommendations of the FRAC have taken into account the needs of diverse groups served by the Departments, membership will, to the extent practicable, include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: March 15, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration.

[FR Doc. 2011–6913 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This collection is a revision of currently approved information collection requirements associated with initiating collection actions against households who have received an overissuance in the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be submitted on or before May 23, 2011 to be assured consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Jane Duffield, Chief, State Administration Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Jane Duffield at 703–305–0928 or via e-mail to *Jane.Duffield@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Christine Daffan at 703–305–2473.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification.

OMB Number: 0584–0492.

Form Number: None.

Expiration Date: July 31, 2011.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2022(b)), and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.18 require State agencies to initiate collection action against households that have been overissued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the household of the claim and demanding repayment. This process is automated in most State agencies. For initiating collection action on an overissuance, we are increasing the estimated annual reporting and recordkeeping burden for State agencies and households from 111,200 hours to 137,584 hours. The reason for the increase is to reflect the higher number of claims that were established in fiscal year (FY) 2009.

Note that for recipient claims, this **Federal Register** notice only covers the reporting and recordkeeping burden for initiating collection action. The burden associated with reporting collections and other claims management information on the FNS–209 report is covered under currently approved OMB number 0584–0069 expiration date 8/31/2012. The burden associated with referring delinquent claims and receiving collections through the Treasury Offset Program is covered under currently approved OMB number 0584–0446 expiration date 2/28/2013. SNAP regulations at 7 CFR 273.16 require State agencies to investigate any case of suspected fraud and, where applicable, make an intentional Program violation (IPV) determination either administratively or judicially. Examples of notifications and activity involved in the IPV process include:

- The State agency providing written notification informing an individual suspected of committing an IPV of an impending administrative disqualification hearing or court action;
- An individual opting to accept the disqualification and waiving the right to an administrative disqualification hearing or court action by signing either a waiver to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication; and
- Once a determination is made regarding an IPV, the State agency sends notification to the affected individual of the action taken on the administrative disqualification hearing or court decision.

Despite an increase in SNAP participation, IPV activity has only increased slightly. We are increasing the

household annual reporting burden for the activities related to IPV disqualifications from 2,348 hours to 2,710 hours.

The States' annual reporting burden for the activities related to IPV disqualifications and hearing notices has increased from 13,340 hours to 15,381 hours. The States' annual recordkeeping burden for the IPV related activities increased from 2,942 hours to 3,396 hours. These increases are due to Program changes as a result of an increased number of SNAP households that States have reported as disqualified.

One of the factors used by a State agency to determine the appropriate disqualification penalty to assign to an individual is whether or not the individual was found to have committed any prior IPVs. The way that State agencies determine this is by accessing and checking the Electronic Disqualified Recipient System (eDRS), which is an automated system developed by FNS that contains records of disqualifications in every State. State agencies are responsible for updating the system and checking it to determine the appropriate length of each disqualification. An estimate of the annual burden associated with the eDRS process reflects an increase from 5,563 hours to 7,967 hours per year.

Summary of Estimated Burden

The net aggregate change from the currently approved burden of 135,393 hours to the proposed annual burden for this collection of 167,038 hours is an increase of 31,645 hours. For initiating collection action on an overissuance, we are increasing the estimated annual burden for State agencies and households from 111,200 hours to 137,584 hours to reflect the higher number of claims established in FY 2009. The IPV-related State agency and household annual reporting and recordkeeping burden has increased from 18,630 hours to 21,487 hours to reflect the higher number of disqualifications. An estimate of the annual burden associated with the eDRS process reflects a total increase from 5,563 hours to 7,967 hours per year. Adjustments have been made to the burden to include requirements not previously identified, burden identified incorrectly, and corrections made in the calculations of the number of responses and hours per response.

Affected Public: State, Local and Tribal government (SA); Individual/Households (I/H).

Respondent Type: SNAP participants.

SA Reporting Burden

Estimated Number of Respondents: 53.

Estimate Total Number of Responses per Respondent: 17,015.77.

Estimated Total Annual Responses: 901,836.

Estimated Time per Response: 0.12760.

Estimated Total Annual Reporting Burden: 115,071.418.

SA Recordkeeping Burden

Estimated Number of Recordkeepers: 53.

Estimated Total Records per Recordkeeper: 14,902.77.

Annual Records: 789,794 + 53 Recordkeepers = 789,847.

Estimated Average # of Hours per Response: 0.03333.

Estimated Total Recordkeeping Hours: 26,326.20.

I/H Reporting Burden

Estimated Number of Respondents: 687,922.

Estimated Number of Responses per Respondent: 1.19333.

Total Number of Annual Responses: 820,917.96.

Estimated Time per Response: 0.03123.

Estimated Total Annual Reporting Burden: 25,640.36.

Grand Total Burden Reporting and Recordkeeping Burden: 167,037.

Dated: March 18, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–6950 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Anne Bartholomew, Branch Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2011/2012 was published by the Department of Health and Human Services (HHS) at 76 FR 3637, January 20, 2011. The guidelines published by HHS are referred to as the poverty guidelines. Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income

guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2011, through June 30, 2012. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.). State agencies may coordinate implementation with the revised Medicaid guidelines, *i.e.,* earlier in the year, but in no case may implementation take place later than July 1, 2011.

State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2011. The first table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

BILLING CODE 3410–30–P

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2011 to June 30, 2012)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1……..	$10,890	$908	$454	$419	$210	$20,147	$1,679	$840	$775	$388
2……..	14,710	1,226	613	566	283	27,214	2,268	1,134	1,047	524
3……..	18,530	1,545	773	713	357	34,281	2,857	1,429	1,319	660
4……..	22,350	1,863	932	860	430	41,348	3,446	1,723	1,591	796
5……..	26,170	2,181	1,091	1,007	504	48,415	4,035	2,018	1,863	932
6……..	29,990	2,500	1,250	1,154	577	55,482	4,624	2,312	2,134	1,067
7……..	33,810	2,818	1,409	1,301	651	62,549	5,213	2,607	2,406	1,203
8……..	37,630	3,136	1,568	1,448	724	69,616	5,802	2,901	2,678	1,339
Each add'l family member add	+ $3,820	+ $319	+ $160	+ $147	+ $74	+ $7,067	+ $589	+ $295	+ $272	+ $136
Alaska										
1……..	$13,600	$1,134	$567	$524	$262	$25,160	$2,097	$1,049	$968	$484
2……..	18,380	1,532	766	707	354	34,003	2,834	1,417	1,308	654
3……..	23,160	1,930	965	891	446	42,846	3,571	1,786	1,648	824
4……..	27,940	2,329	1,165	1,075	538	51,689	4,308	2,154	1,989	995
5……..	32,720	2,727	1,364	1,259	630	60,532	5,045	2,523	2,329	1,165
6……..	37,500	3,125	1,563	1,443	722	69,375	5,782	2,891	2,669	1,335
7……..	42,280	3,524	1,762	1,627	814	78,218	6,519	3,260	3,009	1,505
8……..	47,060	3,922	1,961	1,810	905	87,061	7,256	3,628	3,349	1,675
Each add'l family member add	+ $4,780	+ $399	+ $200	+ $184	+ $92	+ $8,843	+ $737	+ $369	+ $341	+ $171

Hawaii										
1……..	$12,540	$1,045	$523	$483	$242	$23,199	$1,934	$967	$893	$447
2……..	16,930	1,411	706	652	326	31,321	2,611	1,306	1,205	603
3……..	21,320	1,777	889	820	410	39,442	3,287	1,644	1,517	759
4……..	25,710	2,143	1,072	989	495	47,564	3,964	1,982	1,830	915
5……..	30,100	2,509	1,255	1,158	579	55,685	4,641	2,321	2,142	1,071
6……..	34,490	2,875	1,438	1,327	664	63,807	5,318	2,659	2,455	1,228
7……..	38,880	3,240	1,620	1,496	748	71,928	5,994	2,997	2,767	1,384
8……..	43,270	3,606	1,803	1,665	833	80,050	6,671	3,336	3,079	1,540
Each add'l family member add	+ $4,390	+ $366	+ $183	+ $169	+ $85	+ $8,122	+ $677	+ $339	+ $313	+ $157

Authority: 42 U.S.C. 1786.

Dated: March 18, 2011.

Julia Paradis,

Administrator.

[FR Doc. 2011–6946 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Southern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern New Mexico Resource Advisory Committee (RAC) will meet in Socorro, New Mexico. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review project proposals to be implemented in 2011.

DATES: The meeting will be held April 13, 2010, 10 a.m.; and April 14, 8 a.m.

ADDRESSES: The meeting will be held at 198 Neel Avenue, Socorro County Annex Building, Socorro, New Mexico. Written comments should be sent to Mr. Al Koss, HC 68, Box 50, Mimbres, NM 88049–9301. Comments may also be sent via e-mail to *akoss@fs.fed.us,* or via facsimile to 575–536–2242.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Wilderness Ranger District, HC 68, Box 50, Mimbres, NM 88049–9301. Visitors are encouraged to call ahead to 575–536–2250 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mr. Al Koss, Designated Federal Official, 575–536–2250 or *akoss@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review of project proposals for implementation in 2011; and (2) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 28 will have the opportunity to address the Comittee at those sessions.

Dated: March 18, 2011.

Alan E. Koss,

Designated Federal Official.

[FR Doc. 2011–6979 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha West Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hiawatha West Resource Advisory Committee will meet in Rapid River, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on April 21, 2011, and will begin at 6:30 p.m.

ADDRESSES: The meeting will be held at the Masonville Township Offices, 10574 North Main Street, Rapid River, MI 49878. Written comments should be sent to Janel Crooks, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. Comments may also be sent via email to *HiawathaNF@fs.fed.us,* or via facsimile to 906–789–3311.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI. Visitors are encouraged to call ahead to 906–786–4062 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janel Crooks, RAC coordinator, USDA, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, Michigan 49862; (906) 786–4062; Email *jmcrooks@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining roles of the RAC and process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: March 18, 2011.

David J. Silvieus,

Designated Federal Officer.

[FR Doc. 2011–6933 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Butte County Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Butte County Resource Advisory Committee (RAC) will hold a meeting on April 18, 2011 in Oroville, CA. The purpose of the meeting is to: Introduce new RAC members to each other, review the Secure Rural Schools legislation & RAC member responsibilities, review & make funding recommendation for Cycle 1 projects, review a timeline for Cycle 2 project funding and schedule out meeting(s). The funding is made available under Title II provisions of the Secure Rural Schools and Community Self-Determination Act of 2000.

Date & Address: The meeting will take place from 6:30–9 p.m. at the Feather River Ranger District Office, 875 Mitchell Avenue, Oroville, CA.

FOR FURTHER INFORMATION CONTACT: (or for special needs): Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.* Other RAC information may be obtained at *http://www.fs.usda.gov and http://www.fs.fed.us/srs.*

Dated: March 18, 2011.

Matt Janowiak,

Acting Deputy Forest Supervisor.

[FR Doc. 2011–6938 Filed 3–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee To Meet April 18, 2011

ACTION: Notice of Meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet April 18, 2011.

DATES: The meeting will be held on April 18, 2011 and will begin at 4 p.m.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, Conference Room, 1312 Fairlane Road, Yreka, CA.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Committee Coordinator, USDA, Klamath National Forest, Supervisor's Office, 1312 Fairlane Road, Yreka, CA 96097. (530) 841–4484; e-mail *kggreene@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The agenda includes project updates and financial status, and presentation and review of new project proposals to be considered by the RAC. The meeting is open to the public. Opportunity for public comment will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 17, 2011.

Patricia A. Grantham,

Forest Supervisor, Klamath National Forest.

[FR Doc. 2011–6934 Filed 3–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Procedure for Parties on the Entity List To Request Removal or Modification of Their Listing

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is needed to provide a procedure for persons or organizations listed on the Entity List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 1. The Entity List is used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR parts 730–799) requires a license from the Bureau of Industry and Security (BIS). Such requests would be reviewed by the Departments of Commerce, State, and Defense, and Energy and Treasury as appropriate. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. This is a voluntary collection.

II. Method of Collection

Submitted electronically or paper format.

III. Data

OMB Control Number: 0694–0134.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 15.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6906 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: On October 29, 2010, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for Shandong Fengyu Edible Fungus Corporation, Ltd. (Fengyu) [1] and Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 66729 (October 29, 2010) (*Preliminary Results*). We gave interested parties an opportunity to comment on the *Preliminary Results,* and received no comments.

On February 9, 2011, we issued a memorandum announcing our intent to rescind the NSR with respect to Fengyu because we were unable to make an affirmative determination that there was a consumption entry produced by Fengyu during the period of review (POR), which was February 1, 2009

[1] On March 31, 2010, we initiated this NSR on "Shandong Fengyu Edible Fungus Corporation Ltd." *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 16075 (March 31, 2010) (*Initiation Notice*). However, in the *Preliminary Results*, the Department inadvertently referred to Fengyu as, "Shandong Fengyu Edible Fungus Co., Ltd." For the purposes of this NSR, the company's name, as reported to the Department, should be as it appears in the *Initiation Notice* and these final results.

through January 31, 2010. We gave interested parties an opportunity to comment on our intent to rescind the NSR with respect to Fengyu, and received comments from Fengyu on March 15, 2011.[2]

With respect to Tongfa, we made no changes to the *Preliminary Results,* and in these final results we find that this company has not made sales in the United States at below normal value and is eligible for its own individual weighted-average dumping margin. However, with respect to Fengyu, after reviewing the totality of the evidence on the record, we continue to be unable to affirmatively determine the existence of a consumption entry of subject merchandise during the POR. Accordingly, we have determined that it is appropriate to rescind the NSR with respect to Fengyu. For further information, see "Issues and Decision Memorandum for the Final Results in the Antidumping Duty New Shipper Reviews of Certain Preserved Mushrooms from the People's Republic of China," which is dated concurrently with this notice (I&D Memorandum).

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2924, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the *Preliminary Results* for these NSRs on October 29, 2010. In the *Preliminary Results,* the Department invited interested parties to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results* at 66734. No interested party submitted a case brief or rebuttal brief.

On February 9, 2011, the Department put on the record a memorandum providing notice to interested parties of the Department's intent to rescind the NSR of Fengyu on the basis that the record did not affirmatively demonstrate that subject merchandise produced and exported by Fengyu entered the United States for consumption during the POR. *See* Memorandum to the File from Scott Hoefke: Intent to Rescind the New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China for Shandong Fengyu Edible Fungus Corporation Ltd. dated February 9, 2011. On March 15, 2011, Fengyu submitted comments regarding the Department's intent to rescind its review.

Analysis of Comments Received

All issues raised by parties are addressed in the I&D Memorandum. A list of the issues which parties raised, and to which we respond in the I&D Memorandum, is attached to this notice as an Appendix. The I&D Memorandum is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Period of Review

The POR is February 1, 2009, through January 31, 2010.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis.* "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[3]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Separate Rates Determination

A designation of a country as a non-market economy (NME) remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended (the Act). Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. As we fully explained in the *Preliminary Results,* it is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Preliminary Results,* 75 FR 66730–31. As we also fully explained in the *Preliminary Results,* consistent with our practice the Department also investigates whether the sale reported by a company requesting an NSR is commercially reasonable and, therefore, *bona fide. See id.* at 66731.

In the *Preliminary Results,* the Department announced its determination that Tongfa had demonstrated its eligibility for separate rate status. We received no comments from interested parties regarding this determination. In these final results of review, we continue to find that the evidence placed on the record by Tongfa demonstrates the absence of government control, both in law and in fact, with respect to its shipment of the merchandise under review, and that Tongfa's single sale was *bona fide.* Thus, we have made no changes to the *Preliminary Results* with respect to Tongfa and continue to determine that this company is eligible to receive a separate rate and its own individual weighted-average dumping margin.

[2] Fengyu originally submitted comments on February 11, 2011, but pursuant to 19 CFR 351.302(d) we returned the submission to Fengyu because it contained new, unsolicited factual information that, pursuant to 19 CFR 351.301(b)(2) we determined was untimely. After removing the unsolicited information, Fengyu resubmitted its comments on March 15, 2011.

[3] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

Rescission in-Part

Pursuant to 19 CFR 351.214(f)(2), the Department may rescind an NSR, in whole or in part, if: (1) At the end of the normal period of review, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and (2) an expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the NSR within the time limits set forth by 19 CFR 351.214(i).

Based on the record evidence, we are unable to make an affirmative determination that subject merchandise produced and exported by Fengyu actually entered the United States for consumption during the POR. Thus, in the absence of a reviewable entry, consistent with 19 CFR 351.214(f)(2)(i), we are rescinding this NSR with respect to Fengyu. Because we are rescinding this NSR with respect to Fengyu, the presumption that Fengyu is part of the PRC-wide entity will remain in effect. Therefore, effective the date of publication of these final results, entries of subject merchandise produced and exported by Fengyu will be subject to the PRC-wide cash deposit rate of 198.63 percent. *See* I&D Memorandum at Comment 1.

Final Results of the Review

The Department has determined that the following margin exists for the period February 1, 2009, through January 31, 2010:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Producer-exporter	Weighted-average margin (percent)
Zhangzhou Tongfa Foods Industry Co., Ltd.	0.00

Assessment Rates

Consistent with these final results, and pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.212(b)(1), the Department will direct CBP to assess antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions to CBP 15 days after the date of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific (or costumer) assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this NSR for all shipments of subject merchandise exported by Tongfa and entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Tongfa, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Tongfa but not produced by Tongfa, respectively, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 198.63 percent); (3) for subject merchandise produced by Tongfa, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter; and (4) for subject merchandise produced and exported by Fengyu, the cash deposit rate continues to be the PRC-wide rate (*i.e.,* 198.63 percent). Since the cash deposit rate calculated for Tongfa in the final results is zero or *de minimis,* a zero cash deposit will be required for entries of subject merchandise both produced and exported by Tongfa. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: March 18, 2011.

Kim Glas,

Acting Deputy Assistant Secretary for Import Administration.

Appendix

Comment 1. Rescission of Review

[FR Doc. 2011–6996 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold a meeting to discuss competitiveness, energy issues, export/import issues and workforce development issues affecting the U.S. manufacturing sector and to receive briefings from the Departments of Commerce, the Treasury, Labor, and Energy on their activities relating to the U.S. manufacturing sector.

DATES: April 7, 2011.

Time: 9:30 a.m.–11:30 a.m.

ADDRESSES: U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. All guests are requested to register in advance. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than March 31, 2011, to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *jennifer.pilat@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION: The Council was re-chartered on April 8, 2010, to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. Eastern Time on March 31, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: March 18, 2011.

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2011–6903 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2010, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 60733 (October 1, 2010). On October 29, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Nucor Corporation (Nucor) and Cascade Steel Rolling Mills, Inc. (Cascade Steel), domestic producers of carbon wire rod, to conduct an administrative review of the sales of Aceros San Luis S.A. de C.V. (Aceros), Arcelor Mittal Las Truchas, S.A. de C.V. (AMLT), DeAcero de C.V. (DeAcero), Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (Sicartsa), and Talleres y Aceros S.A. de C.V. (Talleres). On October 29, 2010, in accordance with 19 CFR 351.213(b), the Department also received a timely request from ArcelorMittal USA, Inc. (ArcelorMittal),[1] Gerdau Ameristeel US Inc. (Gerdau), and Evraz Rocky Mountain Steel (Evraz), domestic producers of carbon and certain alloy steel wire rod, to conduct an administrative review of the sales of AMLT, Sicartsa, Ternium Mexico SA. de C.V. (Ternium), DeAcero, Aceros, Talleres, and Altos Hornos de Mexico S.A. de C.V. (Altos Hornos). On November 1, 2010, AMLT, a Mexican producer of the subject merchandise requested an administrative review of its exports subject to the antidumping order referenced above.

On November 29, 2010, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period October 1, 2009, through September 30, 2010: Aceros, Altos Hornos, AMLT, DeAcero, Sicartsa, Talleres, and Ternium. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036 (November 29, 2010) (*Initiation Notice*).

In the *Initiation Notice,* the Department stated that in the event the Department limits the number of respondents for individual examination, it intended to select respondents based on data from U.S. Customs and Border Protection (CBP). *See Initiation Notice.* Due to the large number of companies for which a review was requested, the Department performed a query of the CBP database. *See* November 29, 2010, Memorandum to the File "Placement of Query Results of Customs and Border Patrol (CBP) Database on Record of Review," (November 29, 2010). We released the results to interested parties.

On January 10, 2011, the Department announced its intention to limit the number of respondents for individual examination, based on data from CBP. *See* Memorandum from Eric B. Greynolds, Program Manager, to Melissa Skinner, Director, Operations, Office 3, entitled "Respondent Selection," dated January 10, 2011. The Department selected AMLT and Sicartsa as mandatory respondents in this review.[2]

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

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[1] ArcelorMittal did not join in the request for a review of AMLT or Sicartsa. On February 28, 2011, ArcelorMittal withdrew its participation in this administrative review.

[2] We are currently in the process of determining whether AMLT is the successor-in-interest to Sicartsa in an on-going antidumping duty changed circumstances review.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[3]

Partial Rescission of the 2009–2010 Administrative Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). On February 24, 2011, Nucor and Cascade Steel withdrew their request for antidumping duty administrative review for the above referenced order with respect to the following Mexican producers: DeAcero, Aceros, and Talleres. On February 25, 2011, ArcelorMittal, Gerdau, and Evraz, withdrew their request with respect to the following Mexican producers: DeAcero, Aceros, Talleres, Ternium, and Altos Hornos. Both requests for withdrawal were submitted within 90 days of the initiation notice, and are therefore timely, pursuant to 19 CFR 351.213(d)(1). No other party requested a review of any of these five companies.

Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, the Department is rescinding this review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico, in part, with respect to DeAcero, Aceros, Talleres, Ternium, and Altos Hornos. This administrative review will continue with respect to AMLT and Sicartsa.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period October 1, 2009, through September 30, 2010, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 17, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–6992 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–DS–P

[3] Effective January 1, 2006, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See http://hotdocs.usitc.gov/tariff chapters current/toc.html.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey From Argentina: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2010, through December 31, 2010 based on a timely withdrawal of the sole request for review.

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

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0486.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** the countervailing duty order on honey from Argentina. *See Notice of Countervailing Duty Order: Honey From Argentina,* 66 FR 63673 (December 10, 2001). On December 1, 2010, the Department published a notice announcing the opportunity to request an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2010, through December 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). On January 3, 2011, in accordance with 19 CFR 351.213(b), the Department received a timely request from the American Honey Producers Association and the Sioux Honey Association (collectively, Petitioners), to conduct an administrative review. In accordance with section 751(a)(1) of the Tariff Act of 1930 (the Act) and 19 CFR 351.221(c)(1)(i), on January 28, 2011, the Department published a notice initiating an administrative review of the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011). On February 24, 2011, Petitioners withdrew their request for review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners' February 24, 2011, withdrawal was filed within the 90-day period, and no other party requested a review. Therefore, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties at the cash deposit rate in effect on the date of entry, for all entries of honey from Argentina during the period January 1, 2010, through December 31, 2010. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–6993 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Identification of Human Cell Lines Project

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margaret Kline at the National Institute of Standards and Technology, 100 Bureau Drive, Stop 8311, Gaithersburg, MD 20899–8311; or at *Margaret.Kline@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Institute of Standards and Technology (NIST) Biochemical Science Division announces its intent to identify by short tandem repeat (STR) profiling up to 1500 human cell line samples as part of the Identification of Human Cell Lines Project. All data and corresponding information will be posted in a publically held database at the National Center for Biotechnology Information (NCBI) and will be used to differentiate among cell lines, as described in *Designation: ASN–0002 Authentication of Human Cell Lines: Standardization of STR Profiling* by the ATCC Standards Development Organization Workgroup.

Human cell line samples are cells taken from a human being that can be grown in the laboratory and are considered immortal (alive and reproduce forever in a petri plate, given appropriate conditions). They can be used for scientific experiments, as examples of the tissue they're from. Once cells from a tissue have been grown in the lab they are called a cell line. There is a tremendous need for investigators to know with confidence that the cells they are using are of the desired species of origin.

This interactive database will be used by the research and development community to validate cell lines of interest. It will offer DNA profiles of commonly used standard cell lines, as donated by interested parties. The database will allow disparate

laboratories to compare their lines, thereby facilitating the validation of experimental data. Thus the database will address the need for investigators to know much more about the samples used in their research. The database will fulfill an overarching need of researchers to characterize their substrates with an accepted standard.

II. Method of Collection

The data required to differentiate among the cell lines can be submitted in hard copies or electronic submissions to NIST (contact information above).

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations; Academia; Not-for-profit institutions.

Estimated Number of Respondents: 100 (15 cell line limit).

Estimated Time per Response: 2 hours and 30 minutes (10 minutes/cell line × 15 cell lines).

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost to Public: $2,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6910 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Vessel and Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275, or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 665.16 require that all United States (U.S.) vessels with Federal permits fishing for Western Pacific fishery management unit species display identification markings on the vessel and gear, as specified in 50 CFR 665 and 50 CFR 300. Vessels registered for use with a permit issued under Subparts B through E of 50 CFR 665, must display the vessel's official number on both sides of the deckhouse or hull, and on an appropriate weather deck. Vessels fishing in the Western and Central Pacific Convention (WCPFC) Area with a WCPFC Area Endorsement, or required to have a WCPFC Area Endorsement, must comply with the regulations at 50 CFR 300.14 and 50 CFR 300.217. These regulations require that vessels must display their international radio call sign on both sides of the deckhouse or hull, and on an appropriate weather deck, unless specifically exempted. Regulations at 50 CFR 300.35 require that vessels fishing under the South Pacific Tuna Treaty must display their international radio call sign on the hull, the deck, and on the sides of auxiliary equipment such as skiffs and helicopters. The numbers must be a specific size at specified locations. The display of the identifying numbers aids in fishery law enforcement.

Western Pacific fisheries regulations at 50 CFR 665.128, 665.228, 665.428, 665.628, and 665.804 require that certain fishing gear must be marked. In the pelagic longline fisheries, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the coral reef ecosystem fisheries, the vessel number must be affixed to all fish and crab traps. The marking of gear links fishing or other activity to the vessel, aids law enforcement, and is valuable in actions concerning the damage, loss of gear, and civil proceedings.

II. Method of Collection

Third party disclosure.

III. Data

OMB Control Number: 0648–0360.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 311.

Estimated Time per Response: 45 minutes per western Pacific fishing vessel; one hour and 15 minutes per South Pacific purse seine vessel; 2 minutes per gear marking.

Estimated Total Annual Burden Hours: 1,148.

Estimated Total Annual Cost to Public: $35,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: March 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6930 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socio-Economic Surveys of Vessel Owners, Permit Holders, and Crew in New England and Mid-Atlantic Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andrew Kitts, 508–495–2231 or *akitts@mercury.wh.whoi.edu.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection.

The purpose of this survey is to provide for the ongoing collection of social and economic data related to fisheries and their communities in the Northeast and Mid-Atlantic States. These data are needed to support fishery performance measures recently developed by NOAA's Northeast Science Center's Social Science Branch (SSB) in Woods Hole, MA. The measures are: Financial viability, distributional outcomes, stewardship, governance and well-being. Data to support some indicators for these measures are already routinely collected by NMFS. This survey will fill in the gaps, and allow the Northeast to collect trend data needed for more thorough analysis of changes in the fisheries, including impacts from changes in regulations. The National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, both contain requirements for considering the social and economic impacts of fishery management decisions. Currently, however, no data exist that allow for tracking the social impacts of fishery management policy and decisions over time in the Northeast and Mid-Atlantic States, and insufficient economic trend data are available. In implementing policies and management programs and in meeting the social and economic impact assessment requirements of NEPA and MSA, there is a need to understand how such policies and programs will affect the social and economic characteristics of those involved in the commercial fishing industry. Under this survey, the SSB intends to collect socio-economic data from vessel owners, permit holders, hired captains, and crew involved in commercial fishing in New England and the Mid-Atlantic States. Data to be collected include information on crew, wage calculation systems, individual and community well-being, fishing practices, job satisfaction, job opportunities, and attitudes toward fisheries management. SSB intends to collect these data on an ongoing (*e.g.,* annually or biennially) basis in order to track how socio-economic characteristics of fisheries are changing over time and to track the impact of fishery policies and management programs implemented in New England and the Mid-Atlantic.

NOAA is aware of a survey begun by the University of Rhode Island in 2009/2010 in New England under a grant from the Commercial Fisheries Research Foundation, that seeks PRA clearance for a follow-up in the Mid-Atlantic in summer 2011 under NOAA funding (Social Impacts of the Implementation of Catch Shares Programs in the Mid-Atlantic, OMB Control No. 0648–xxxx). The current request has learned from some elements of the URI and follow-on survey. However, this request (1) Is focused on fisheries management in general while the earlier study is focused solely on catch shares, (2) is an ongoing survey rather than a one-time effort, and (3) specifically targets performance indicators for which data are not currently being collected.

II. Method of Collection

The most appropriate method of collection is still being investigated through an ongoing research project. For the owners/permit holders' survey, NOAA is considering in-person interviewing, a phone survey, or mail survey, although the possibility of using an e-mail survey is also being considered. For the crew survey, research is being conducted to determine the most appropriate method of collection. Given the population (ships' crew), NOAA is considering either an in-person intercept approach or a phone survey, depending on the availability of phone numbers for crew.

Additionally, in order to reduce per-respondent burdens, SSB is considering splitting questions asked among the respondents. A core set of questions would be asked to all sample respondents, but some questions would only be asked to one half of the sample and another set of questions would be asked to the other half of the sample.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new collection).

Affected Public: Individuals or households; Business or other for-profit.

Estimated Number of Respondents: 1,000 annually.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6924 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Perceptions About the Biological and Socio-Economic Performance of Marine Regulations in the U.S. Caribbean

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Brent Stoffle, (305) 361–4276 or *brent.stoffle@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect demographic, socio-economic, and attitudinal information on the efficacy of marine regulations in the United States (U.S.) Virgin Islands and Puerto Rico. The data gathered will be used to: (1) Describe the fishermen's perceptions about the performance of existing marine regulations such as marine reserve designations, seasonal closures and gear bans, (2) document the social and economic changes brought about by these regulations, and (3) evaluate the likely socio-economic impacts of management proposals. In addition, the information will be used to satisfy legal mandates under Executive Order 12898, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

In addition to using ethnographic methods—for example, participant observation, group and key informant interviews, a standardized survey will be administered via in-person, telephone and/or mail to a representative sample of the population of U.S. Caribbean fishermen.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 1 hr.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6914 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, and for Designation as a Sea Grant College or Sea Grant Institute

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dorn Carlson, 301–734–1080 or *dorn.carlson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a renewal of a currently approved information collection.

The objectives of the National Sea Grant College Program, as stated in the Sea Grant legislation (33 U.S.C. 1121–1131) are to increase the understanding, assessments, development, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources. It accomplishes these objectives by conducting research, education, and outreach programs.

Grant monies are available for funding activities that help obtain the objectives of the Sea Grant Program. Both single and multi-project grants are awarded, with the latter representing about 80 percent of the total grant program. In addition to other standard grant application requirements, three forms are required with the grants. These are the Sea Grant Control Form 90–2, used to identify the organizations and personnel who would be involved in the

grant; the Project Record Form 90–1, which collects summary data on projects; and the Sea Grant Budget Form 90–4, which provides information similar to, but more detailed than on, forms SF–424A or SF–424C.

The National Sea Grant College Program Act (33 U.S.C. 1126) provides for the designation of a public or private institution of higher education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. Applications are required for designation of Sea Grant Colleges and Sea Grant Institutes.

II. Method of Collection

Responses are made in a variety of formats, including forms and narrative submissions, via mail, fax or e-mail. The Sea Grant Project Record Form and Sea Grant Budget Form must be submitted in electronic format through grants.gov if the grant applicant has the means to do so.

III. Data

OMB Control Number: 0648–0362.

Form Number: NOAA Forms 90–1, 90–2 and 90–4.

Type of Review: Regular submission (renewal of a current information collection).

Affected Public: Not-for-profit institutions; business or other for-profit organizations; individuals or households; State, Local or Tribal Government.

Estimated Number of Respondents: 768.

Estimated Time per Response: 30 minutes for a Sea Grant Control form; 20 minutes for a Project Record Form; 15 minutes for a Sea Grant Budget form; and 20 hours for an application for designation as a Sea Grant college or Sea Grant institute.

Estimated Total Annual Burden Hours: 857.

Estimated Total Annual Cost to Public: $1,833.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6944 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA261

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration, and that the activities authorized under this EFP would be consistent with the goals and objectives of the Monkfish Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. This would grant exemptions from monkfish days-at-sea (DAS) possession limits.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 8, 2011.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: nero.efp@noaa.gov.* Include in the subject line "Comments on UMES Monkfish RSA EFP."
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UMES monkfish RSA EFP."
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978–281–9177.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by the University of Maryland Eastern Shore (UMES) on February 18, 2011, in support of a project preliminarily selected under the New England and Mid-Atlantic Fishery Management Councils' Monkfish RSA Program. The project proposes to investigate the influence of temperature on monkfish distribution and abundance. This EFP would grant an exemption from monkfish possession limits to facilitate compensation fishing to fund this research project. While conducting RSA compensation trips, participating vessels would use gillnets that are 12-inch (30.5 cm) stretch mesh with a 3.5-inch (30.5 cm) diameter gauge web that is 12 meshes deep. The nets do not exceed 300 ft (91.4 m) in length. Average soak times differ between vessels, with a range of 36 to 72 hours. Each vessel would receive two temperature and depth loggers to attach to gillnets during RSA compensation fishing trips. The loggers would collect temperature and depth at intervals of 1 hour, and would be downloaded approximately every 2 months. Catch data (number and size of monkfish) from panels with probes would be recorded by collaborating fishermen, along with information on location, depth fished, water currents, and lunar cycle. UMES plans to collect histological samples on board the fishing vessels from a subset of trips for analysis of reproductive condition. Weights and length measurements would be taken each trip from a minimum of 25 randomly selected monkfish from the nets with attached temperature probes to gain information about fish distribution.

Compensation fishing for this research would occur from May 2011 through April 2012, with a possible extension through April 2013, as authorized by the Monkfish FMP and 50 CFR 648.92(c)(1)(v). Pending a final award by NOAA Grants, UMES has been awarded 96 monkfish DAS under the Monkfish RSA Program. To facilitate compensation fishing, the applicant has requested exemptions from monkfish DAS possession limits at §§ 648.94(b)(1) and (2). The applicant has stated that these exemptions would provide vessels the flexibility they need to generate sufficient income to meet projected

costs of the research activity, while minimizing operating expenses. Based on the preliminary award of 96 DAS and projected monkfish catch rates, this would allow a total catch of 345,600 lb (156,762 kg) of whole monkfish (104,097 lb (47,218 kg) tail weight). Operating under this total landings cap, compensation fishing would continue until the goal of 345,600 lb (156,762 kg) of whole monkfish is caught, or until the awarded DAS have been fully utilized, whichever occurs first. Aside from these exemptions, fishing activity would be conducted under normal commercial practices. NMFS is considering imposing a cap on monkfish DAS possession limit exemptions for vessels operating under the monkfish RSA program due to potential effect that such exemptions may have on monkfish market price and catch rates for non-RSA vessels.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–7020 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA269

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration and that the activities authorized under this EFP would be consistent with the goals and objectives of the Monkfish Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. This EFP would grant exemptions from monkfish days-at-sea (DAS) possession limits.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 8, 2011.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: nero.efp@noaa.gov.* Include in the subject line "Comments on GMRI Monkfish RSA EFP."
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GMRI monkfish RSA EFP."
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978–281–9177.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by the Gulf of Maine Research Institute (GMRI) on February 23, 2011, in support of a project preliminarily selected under the New England and Mid-Atlantic Fishery Management Councils' Monkfish RSA Program. The project proposes to use archival tagging and age validation efforts to assess monkfish movement, age structure, and growth. This EFP would grant an exemption from monkfish possession limits to facilitate compensation fishing to fund this research project. GMRI would tag monkfish using data storage tags that would record time, pressure (depth), and temperature. GMRI would charter fishing vessels to conduct the research. The vessels would use standard commercial gear and land monkfish for sale, but sampling locations and protocol would be controlled by the researcher. The research vessels would not land any fish below the legal size for commercial purposes.

Compensation fishing for this research would occur from May 2011 through April 2012, with a possible extension through April 2013, as authorized by the Monkfish FMP and 50 CFR 648.92(c)(1)(v). Pending a final award by NOAA Grants, GMRI has been awarded 368 monkfish DAS under the Monkfish RSA Program. To facilitate compensation fishing, the applicant has requested exemptions from monkfish DAS possession limits at 50 CFR 648.94(b)(1) and (2). The applicant stated that these exemptions would provide the vessels with flexibility to fulfill the financial needs of the project, while minimizing vessel operating expenses. Based on budget needs and an estimated monkfish price per pound, the project would need a total catch of 1,324,800 lb (600,919 kg) of whole monkfish (399,036 lb (181,000 kg) tail weight). Operating under this total landings cap, compensation fishing would continue until the goal of 1,324,800 lb (600,919 kg) of whole monkfish is caught, or until the awarded DAS have been fully utilized, whichever occurs first. Aside from these exemptions, fishing activity would be conducted under normal commercial practices. NMFS is considering imposing a cap on monkfish DAS possession limit exemptions for vessels operating under the monkfish RSA program due to potential effects that such exemptions may have on monkfish market price and catch rates for non-RSA vessels.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–7023 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA270

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would exempt participating vessels from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of collecting fishery dependent catch data and biological samples that is being conducted by the Northeast Fisheries Science Center's (NEFSC) Study Fleet Program.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on EFP applications.

DATES: Comments must be received on or before *April 8, 2011.*

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: nero.efp@noaa.gov.* Include in the subject line "Comments on NEFSC Study Fleet EFP."
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NEFSC Study Fleet EFP."
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Carly Knoell, Fisheries Management Specialist, 978–281–9224, *Carly.Knoell@noaa.gov.*

SUPPLEMENTARY INFORMATION: NEFSC submitted a complete application for an EFP on February 7, 2011, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would exempt 24 Federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and land fish.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under normal fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

Participating vessels would also be authorized to retain and land, in limited situations for research purposes only, fish that do not comply with fishing regulations. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, in marked totes, which would be delivered to Study Fleet Program technicians. In addition, if the EFP is approved, NEFSC and participatory vessels would be notified that spiny dogfish and black sea bass could not be targeted during a quota closure, and that any live spiny dogfish or black sea bass that are caught must be discarded. No spiny dogfish or black sea bass could be landed for commercial purposes as part of this research project during a quota closure. The NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish in excess of possession limits and/or below minimum size limits to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs, as detailed below. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than scientific research.

The table below details the regulations from which the participating vessels would be exempt. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. All catch of stocks allocated to Sectors by vessels on a Sector trip would be deducted from the Sector's Annual Catch Entitlement for each Northeast multispecies stock regardless of what fishery the vessel was participating in when the fish was caught.

NEFSC STUDY FLEET PROGRAM EFP

Number of vessels	24
Possession	Possession for at-sea sampling plus limited landing
Exempted regulations in 50 CFR part 648	*Size limits:* § 648.83(a)(3) NE multispecies minimum size. § 648.93 Monkfish minimum fish size. § 648.103 Summer flounder minimum fish size. § 648.143(a) Black sea bass minimum fish size. *Possession restrictions:* § 648.86(b) Atlantic cod. § 648.86(c) Atlantic halibut. § 648.86(e) White hake. § 648.86(g) Yellowtail flounder. § 648.86(g)(1) Southern New England Yellowtail flounder possession limit. § 648.86(j) Georges Bank Winter flounder. § 648.86(n)(1) Zero retention of SNE Winter flounder. § 648.94 Monkfish possession limit. § 648.22(c) Incidental possession limit of *Loligo*. § 648.322 Skate possession and landing restrictions. § 648.141 Black sea bass closure. § 648.145 Black sea bass possession limits.

NEFSC STUDY FLEET PROGRAM EFP—Continued

Number of vessels	24
Possession	Possession for at-sea sampling plus limited landing
	§ 648.231 Spiny dogfish closure. § 648.235 Spiny dogfish possession and landing restrictions.

The following descriptions detail the NEFSC Study Fleet Program's Sampling Needs:

Haddock—whole fish would be retained for maturity and fecundity research. The haddock retained would not exceed 30 fish per trip, or 360 fish for all trips. The maximum weight of haddock on any trip would not exceed 120 lb (54.43 kg) total weight per trip, and would not exceed 1,440 lb (653.17 kg) for all trips combined.

Yellowtail Flounder—whole fish would be retained for maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. The yellowtail flounder retained would not exceed 60 fish per month from each of the three stock areas (Gulf of Maine (GOM), Georges Bank (GB), Southern New England/Mid-Atlantic (SNE/MA)), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 50 lb (22.70 kg) total weight, and would not exceed 1,500 lb (680.39 kg) for all trips combined.

Summer Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The summer flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 3,000 lb (1,360.78 kg) for all trips combined.

Winter Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The winter flounder retained would not exceed 60 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,800 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 2,250 lb (1,020.58 kg) for all trips combined.

Spiny Dogfish—Whole fish would be retained for reproductive biology research. The spiny dogfish retained would not exceed 50 fish per month from each of the two stock areas (GOM, SNE/MA), or 1,200 fish total for all trips. The maximum weight on any trip would not exceed 390 lb (176.9 kg), and would not exceed 9,360 lb (4,245.62 kg) total for all trips.

Monkfish—whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 1,200 lb (544.31 kg) for all trips combined.

Cod—whole fish would be retained for tagging demonstrations and educational purposes. Cod to be retained would not exceed 15 fish per trip, or 60 cod for all trips. The maximum weight on any trip would not exceed 150 lb (68.04 kg) total weight, and would not exceed 600 lb (272.16 kg) for all trips combined.

Barndoor Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Thorny Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per trip, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) whole weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

Black Sea Bass—whole fish would be retained for examination of seasonal and latitudinal patterns in energy allocation. This effort is in support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per trip or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.40 kg) total weight, and would not exceed 1,000 lb (453.59 kg) total for all trips combined.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–7018 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA89

Identification of Nations Whose Fishing Vessels Are Engaged in Fishing in Waters Beyond Any National Jurisdiction That Target or Incidentally Catch Sharks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice and request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in fishing in waters beyond any national jurisdiction that target or incidentally catch sharks. Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act).

DATES: Information should be received on or before August 1, 2011, but will be accepted up to December 1, 2011.

ADDRESSES: Information should be submitted to NMFS Office of International Affairs, Attn.: MSRA Shark Information, 1315 East-West Highway, Silver Spring, MD 20910. E-mail address: *SHARK.INFO@noaa.gov* or fax (301) 713–9106.

FOR FURTHER INFORMATION CONTACT: NMFS Office of International Affairs,

or Cheri McCarty (ph. 301–713–9090).

SUPPLEMENTARY INFORMATION: The Shark Conservation Act of 2010 (S.850) amended the Moratorium Protection Act (16 U.S.C.1826d–k) to require actions be taken by the United States to strengthen shark conservation. Specifically, these amendments to the Moratorium Protection Act require the Secretary of Commerce to identify nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. The Secretary is required to begin making identifications not later than January 4, 2012.

The Moratorium Protection Act also requires the Secretary of Commerce to certify whether each nation identified has taken the following steps to warrant receipt of a positive certification: Provided documentary evidence of adoption of a regulatory program that is comparable to that of the United States, taking into account different conditions and established a management plan containing requirements that will assist in gathering species-specific data. If a nation does not receive a positive certification by the Secretary of Commerce, it could be subject to sanctions under the High Seas Driftnet Fisheries Enforcement Act (Enforcement Act) (16 U.S.C. 1826a).

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is in the process of collecting and analyzing information on nations whose vessels target or incidentally catch sharks in waters beyond any national jurisdiction in anticipation of making identifications by January 4, 2012. NMFS is soliciting information from the public that could assist in its identification of nations engaged in such activities. Information that may prove useful to NMFS includes:

- Documentation (photographs, *etc.*) of fishing vessels engaged in targeted or incidental catch of sharks on the high seas;
- Fishing vessel records;
- Trade data supporting evidence that a nation's vessels are engaged in shark catch;
- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- RFMO catch documents and statistical document programs, as appropriate;
- Nation's domestic regulations for shark conservation and management; and
- Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. NMFS is interested in information on shark fishing activity during calendar year 2011. Information should be as specific as possible to assist NMFS in its review.

NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including but not limited to:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

On January 12, 2011, NMFS published a final rule to implement both the identification and certification procedures for nations whose vessels were engaged in illegal, unreported, or unregulated (IUU) fishing or bycatch of protected living marine resources. NMFS plans to publish a proposed rule to establish the identification and certification procedures for nations whose fishing vessels are engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks if the nation has not adopted a regulatory program for the conservation of sharks that is comparable to that of the United States, taking into account different conditions.

Dated: March 21, 2011.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–6980 Filed 3–21–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA315

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystems and Ocean Planning Committee, its Squid, Mackerel, and Butterfish Committee, its Spiny Dogfish Committee, and its Executive Committee will hold public meetings.

DATES: Tuesday, April 12, 2011 through Thursday, April 14, 2011. On Tuesday, April 12—The Ecosystems and Ocean Planning Committee will meet from 2 p.m. until 5 p.m. On Wednesday, April 13—The Squid, Mackerel, and Butterfish Committee will meet from 8:30 a.m. until 11 a.m. From 11 a.m. until 12 p.m. there will be a Squid Trawl Proposed Rule Highly Migratory Species (HMS) Presentation. From 1 p.m. to 3 p.m. there will be a continuation of the Squid, Mackerel, and Butterfish Committee. The Spiny Dogfish Committee will meet from 3 p.m. until 5 p.m. There will be a Public Listening Session from 5 p.m. until 6 p.m. On Thursday, April 14—The Executive Committee will meet from 8 a.m. until 9 a.m. The Council will convene at 9 a.m. A 3–Year Standardized Bycatch Reporting Methodology Report (SBRM) will be from 9 a.m. until 10 a.m. There will be a Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) Presentation from 10 a.m. until 11 a.m. From 11 a.m. until 11:30 a.m. the Council will receive an Update on Amendment 6 to the Monkfish Fishery Management Plan (FMP). The Council will hold its regular Business Session from 11:30 a.m. until 1:30 p.m. to approve the February 2011 minutes, receive Organizational Reports, the South Atlantic Liaison Report, the

Executive Director's Report, the Science Report, Committee Reports, and conduct any continuing and/or new business.

ADDRESSES: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401; *telephone:* (410) 263–2641.

Council Address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; *telephone:* 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, PhD, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–526–5255.

SUPPLEMENTARY INFORMATION: Agenda items by day for the Council's Committees and the Council itself are: On Tuesday, April 12—The Ecosystems and Oceans Planning Committee will prioritize recommendations from the December Workshop. On Wednesday, April 13—The Squid, Mackerel, and Butterfish Committee will review Advisory Panel (AP) Membership, review Amendment 14 analysis and direct the Fishery Management Action Team (FMAT), and adjust Amendment 14 range of alternatives as appropriate. The Council will hear an HMS presentation on the Squid Trawl Proposed Rule and look at options to minimize discards of swordfish in the *Illex* fishery and the trawl retention limits for incidental catch of smooth dogfish. The Spiny Dogfish Committee will identify action alternatives for Amendment 3. There will be a Public Listening Session where the Council invites the public to engage Council leadership and NMFS representatives in a Q & A roundtable session. Those in attendance will be able to ask questions or comment on any issue related to Mid-Atlantic Fisheries Management including annual specifications, ecosystem management, bycatch reduction, catch shares, *etc.* On Thursday, April 14—The Executive Committee will discuss the Council budget, the process and timeline for 2012 specifications, the AP Performance Report, the ecosystem based fisheries management goals and objectives, the Advisory Panel composition and governance, Council communications, and hold a NRCC Meeting review. Dr. Paul Rago will provide the Council with a presentation regarding the 3-Year SBRM Report. The Council will hear a BOEMRE presentation which will provide the Council with an overview of offshore wind energy, introduction to the *Smart from the Start* Energy Initiative, and an overview of the Proposed Mid-Atlantic Wind Energy Areas. Howard King will provide the Council with an update on Amendment 6 to the Monkfish FMP. The Council will hold its regular Business Session to approve the February 2011 minutes, receive Organizational Reports, hear the South Atlantic Liaison Report, the Executive Director's Report, the Science Report, Committee Reports, and conduct any continuing and/or new business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders (302–526–5251) at least five days prior to the meeting date.

Dated: March 21, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6954 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA317

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Hawaii Advisory Panel (AP), Hawaii Plan Team (PT), Pelagic PT and Regional Ecosystem Advisory Committee (REAC).

DATES: The Hawaii PT meeting will be held on April 12 to 13, 2011, Hawaii AP meeting on April 13 to 14, 2011, and Hawaii REAC meeting on April 20, 2011. The Pelagic PT meeting will be held on April 26 to 28, 2011. For specific times and agendas, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Hawaii AP, PT, REAC and Pelagic PT meetings will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; *telephone:* (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for Hawaii PT Meeting

9 a.m.–5 p.m. Tuesday and Wednesday, April 12–13, 2011

The Hawaii PT will meet to hear reports on, discuss and consider developing recommendations on the following upcoming Council meeting actions:

1. Status of Fishery Monitoring Programs and Research Projects
   A. Coral Reef Fisheries
   B. Crustacean Fisheries
   C. Precious Coral Fisheries
   D. Pacific Islands Regional Office (PIRO) Administrative Activities
   E. Bottomfish Fisheries
   i. Main Hawaiian Islands (MHI) Total Allowable Catch (TAC) Monitoring
   ii. Market/Economic Report
   iii. PIRO Report on TAC and Annual Catch Limits (ACL) process update
   iv. Recreational permit and reporting
2. Hawaii Archipelago Fishery Ecosystem Plan (FEP) Draft Annual Report Structure
3. Improving Fishery Data Collection and Research
   A. Update on Recommendations from 2009 Fishery Data Workshop
   B. Magnuson-Stevens Act (MSA) Five-Year Priorities
   C. Review of Cooperative Research
   D. Review of PT Risk Ranking Results for Stock Assessment and ACLs
4. Other Business
5. National Fisheries Mandates
   A. Coastal and Marine Spatial Planning (CMSP)
   i. Overview of CMSP
   ii. Community CMSP Workshop Plans
   B. Update on ACLs
   C. Report on ACL and Catch Share Workshops
6. Upcoming Fishery Management Actions
   A. Options for Non-Commercial Fishery Data Reporting
   B. Hawaiian Archipelago Bottomfish Essential Fish Habitat (EFH) and Habitat Area of Particular Concern (HAPC) Review
   C. Status of State Bottomfish Regulatory Changes
   D. Options for Limited Entry of Offshore Aquaculture
7. Coral Reef Funded Projects
   A. Kona Crab Stock Assessment
   B. Black Coral Mapping
   C. Deepwater Chorusing Phenomenon
   D. Report on Tournament Sampling
   E. Upcoming Coral Reef Projects

Schedule and Agenda for Hawaii AP Meeting

9 a.m.–5 p.m. Wednesday to Thursday, April 13–14, 2011

The Hawaii AP will meet to hear reports on, discuss and consider

developing recommendations on the following upcoming Council meeting actions:

1. National Fisheries Mandates
A. Coastal and Marine Spatial Planning (CMSP)
i. Overview of CMSP
ii. Community CMSP Workshop Plans
B. Update on Annual Catch Limits (ACLs)
C. Report on ACL and Catch Share Workshops
2. Upcoming Fishery Management Actions
A. Options for Non-Commercial Fishery Data Reporting
B. Hawaiian Archipelago Bottomfish EFH and HAPC Review
C. Status of State Bottomfish Regulatory Changes
D. Options for Limited Entry of Offshore Aquaculture
3. Coral Reef Funded Projects
A. Kona Crab Stock Assessment
B. Black Coral Mapping
C. Deepwater Chorusing Phenomenon
D. Report on Tournament Sampling
E. Upcoming Coral Reef Projects
4. Council and Advisory Panel Responsibilities
A. Council and MSA Overview
B. Advisory Panel Responsibilities
5. Review of Previous Day Presentations
A. Review of Action Items
6. Hawaii Fishery Issues
A. Fishery Issues Presented by Members
B. MHI Bottomfish Update
C. Ocean Regulatory Regime Review Initiative
D. Fishery Development
E. Other Business
7. Ecosystems and Communities
A. Report on Hoolei Ia Puwalu
B. Marine Recreational Information Program/National Salt Water Angler Registry Update
C. Community Monitoring Tacklebox

Schedule and Agenda for Hawaii REAC Meeting

9 a.m.–4 p.m. Wednesday, April 20, 2011

The Hawaii REAC will meet to hear reports on, discuss and consider developing recommendations on the following upcoming Council meeting actions:

1. Marine and Coastal Ecosystem Policies, Program and Community Initiatives
A. Coastal and Marine Spatial Planning
i. Pacific Islands Regional Office
ii. Pacific Services Center Activities
iii. Pacific Ocean Regional Partnership
B. Ocean Regulatory Regime Review Initiative
C. Aha Moku Initiative
2. Ocean Management Activities
A. Hawaiian Islands Humpback Whale Sanctuary Management Plan Review
B. Hawaiian Archipelago Bottomfish Essential Fish Habitat
C. Protected Species
i. Endangered Species Act (ESA) Incidental Take Permit for Sea Turtles and Monk Seals
ii. Monk Seal—Programmatic Environmental Impact Statement (EIS)
iii. Insular False Killer Whale listing Under ESA
iv. Spinner Dolphin Human Interaction EIS and Rule-making
3. Overview of 2011 Ocean Legislation
4. Impacts of the March 2011 Tsunami

Schedule and Agenda for the Pelagic PT Meeting

8:30 a.m.–5 p.m. Tuesday to Thursday, April 26–28, 2011

The Pelagic Plan Team members from Hawaii, American Samoa, Guam, and Commonwealth of Northern Mariana Islands (CNMI) will meet to hear reports on, discuss and consider developing recommendations on the following upcoming Council meeting actions:

1. Annual Report review
a. Review 2010 Annual Report modules and recommendations
i. CNMI
ii. American Samoa
iii. Guam
iv. Hawaii
v. International
vi. Recreational
b. 2010 Annual report region wide recommendations
2. Summary of current Fishery Ecosystem Plan (FEP) amendment actions
3. American Samoa longline fishery large circle hooks study
4. Potential American Samoa swordfish fishery
5. Marine Conservation Biology Institute (MCBI)/NMFS seabirds and pelagic fish workshop
6. Pacific Council Highly Migratory Species Plan Amendment 2 and lead Council designation
7. Migratory Bird Treaty Act—permit implications for pelagic fisheries
8. Hawaii Troll/charter fishery Category I to Cat II listing
9. Loggerhead status—Implications for consultations
10. Other business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least five days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: March 21, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6956 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oeanic and Atmospheric Administration

RIN 0648–XA318

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on April 12–13, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, April 12 at 10 a.m. and Wednesday, April 13, 2011 at 8:30 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; *telephone:* (401) 861–8000; *fax:* (401) 861–8002.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, April 12, 2011–Wednesday, April 13, 2011

The Scientific and Statistical Committee (SSC) will peer review work completed by the Council's Skate Plan Development Team. The review is being convened on April 12, 2011 for the purpose of providing expert technical comments and advice on the following: Approve a FSV Bigelow calibration method to be used to recommend Skate

Acceptable Biological Catch (ABC) specifications for 2011–2013 and to determine status; approve the calibration of FSV Bigelow catches to FSV Albatross equivalents, rather than vice versa and approve the use of a consistent set of FSV Bigelow strata to adjust biological reference points and adjust the catch/biomass medians as a basis for setting ABC.

On Wednesday, April 13, 2011, the SSC will discuss the Council's Whiting/Hake Plan Development Team's evaluation of ABC-setting options. Specifically it will provide guidance to the plan team concerning the development of ABC specifications for inclusion in Amendment 19 (small mesh multispecies component) to the Northeast Multispecies Fishery Management Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6957 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA316

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Social and Economic Sub-Committee of the Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet with the Council's Squid, Mackerel, and Butterfish (SMB) Advisory Panel (AP).

DATES: Thursday, April 14 through Friday, April 15, 2011.

ADDRESSES: The meeting will be held at the Historic Inns of Annapolis, MD 21401 telephone: (410) 263–2641.

Council Address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; *telephone:* (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, PhD, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; *telephone:* (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review fishery performance and create an AP Fishery Performance Report for Squid, Mackerel, and Butterfish. On Friday, April 15—The Joint Meeting of the Squid, Mackerel, and Butterfish AP and SSC Socio-Economic Sub-Committee meeting will be continued.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least five days prior to the meeting date.

Dated: March 21, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6955 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Comment Period for Revised Management Plans for the following National Estuarine Research Reserves: ACE Basin, SC and Old Woman Creek, OH.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty-day comment period for the revised management plans and boundary amendments of the ACE Basin, SC National Estuarine Research Reserve and Old Woman Creek, OH National Estuarine Research Reserve.

The revised management plan for the ACE Basin, SC National Estuarine Research Reserve outlines the administrative structure; the education, training, stewardship, and research programs of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The objectives described in this plan address the most critical coastal issues in ACE Basin related to habitat conservation, water quality, community resilience, and public access. Since the last approved management plan in 1992, the reserve has become fully staffed; added a Coastal Training Program that delivers science-based information to key decisionmakers; and added significant monitoring of emergent marsh vegetation, water quality, and invasive species. In addition to programmatic and staffing advances, the reserve has constructed an interpretive center that houses educational exhibits, classrooms, offices, conference space, trails and dock with public access. A field station with lab facilities, research dock, and accommodations for visiting researchers has also been constructed.

This management plan amends the boundary to include 4,687 acres of the Botany Bay Plantation located adjacent to the northeastern corner of Edisto Island in lower Charleston County, SC. The undeveloped coastal habitats of the plantation include maritime forest, coastal shrub, wetlands, tidal marshes and sand beaches. The property provides important habitat for numerous wildlife species, including critical nesting habitat for the Federally threatened loggerhead sea turtle and the State threatened least tern. The lands contain significant cultural resources and list several sites on the National Register of Historic Places. This management plan amends the boundary by also removing 40,089 acres of private lands previously counted in error. In total, the ACE Basin Reserve includes 99,308 acres designated for long term research, education and stewardship. This plan can be accessed for review at *http://www.dnr.sc.gov/marine/NERR/index.html.*

The revised management plan for the Old Woman Creek, OH National

Estuarine Research Reserve contains the collective vision, mission, goals, and objectives of the reserve; updates the reserve boundary; as well as outlines plans for facility use and development to support reserve operations. The objectives described in this plan address the most critical coastal issues of the reserve related to water quality (non-point source pollution), invasive species, habitat loss and regional ecosystem impacts of climate change. Since the last approved management plan in 2000, the reserve has become fully staffed; added a Coastal Training Program that delivers science-based information to key decisionmakers; and developed partnerships to continue to restore and protect land and waters in the Old Woman Creek watershed. In addition to programmatic and staffing advances, the reserve has completed construction of a new dormitory, boathouse, and administrative spaces.

This management plan includes a boundary expansion of 2.2 acres. This land was incorporated with the State nature preserve in 2004 and is subject to all protection afforded by Ohio laws governing State nature preserves. The additional parcel is adjacent to the reserve's southwestern boundary and consists of early successional habitat (*e.g.,* various Cornus sp.) and will become an area dominated by mixed hardwoods. Incorporating these lands increases the size of the reserve to 573 acres. This plan can be accessed for review at: *http://www.oldwomancreek.org.*

FOR FURTHER INFORMATION CONTACT: Bree Murphy at (301) 563–1124 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: March 15, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–6901 Filed 3–23–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF ENERGY

Critical Materials Strategy Request for Information

AGENCY: Department of Energy.

ACTION: Notice of availability of Request for Information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is seeking information from stakeholders on rare earth elements and other materials used in energy technologies to support analyses updating its *2010 Critical Materials Strategy.*

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this Request for Information (RFI), please contact DOE at *materialstrategy@hq.doe.gov* or call 202–586–5800. The RFI is also available on DOE's Web site at *http://www.pi.energy.gov.*

DATES: Responses to the RFI are due no later than 5 p.m. (EDT) on May 24, 2011.

SUPPLEMENTARY INFORMATION: Last year, DOE issued its first *Critical Materials Strategy.* This year, DOE will update its analysis. The responses to this RFI will help DOE develop a more detailed picture of technology material content, supply chain structure, financing, R&D, energy technology transitions and recycling. This information will help DOE to analyze material criticality and determine the best policies to promote diverse, sustainable and economical supplies, as well as efficient use.

Dated: March 18, 2011.

David Sandalow,

Assistant Secretary for Policy and International Affairs, Department of Energy.

[FR Doc. 2011–6971 Filed 3–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, April 19, 2011, 11 a.m. to 1 p.m. (EDT).

ADDRESSES: IBM, 955 L'Enfant Plaza North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. *Phone:* 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

Tentative Agenda

10:30 a.m. Registration.
11 a.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; Report by the Editing Subcommittee; Facilitated Discussion by the Members regarding Final Report; Approval of Committee Final Report.
12:45 p.m. Public Comments, if any.
1 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least two business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 3 minute rule.

Minutes: Minutes will be available by writing or calling Elena Melchert's office at the address or phone number listed above.

Issued at Washington, DC on March 18, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–6949 Filed 3–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–51–000.

Applicants: Capital Power Investments LLC, LS Power Equity Partners II, L.P., LS Power Equity Partners II Pie A, L.P., LS Power Equity Partners II Pie B, L.P., LS Power Partners II, L.P., Bridgeport Energy, LLC.

Description: Application of LS Power Partners II, L.P., et al. for Order Under

section 203 of the Federal Power Act and Requests for Confidential Treatment, Limited Waivers, and 21 Day Comment Period.

Filed Date: 03/16/2011.

Accession Number: 20110316–5145.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–70–000.

Applicants: Lively Grove Energy Partners, LLC.

Description: Self-Certification of EG or FC of Lively Grove Energy Partners, LLC.

Filed Date: 03/16/2011.

Accession Number: 20110316–5128.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2748–002.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35: ICT Extension Compliance Filing to be effective 11/17/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5038.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–2127–002.

Applicants: Terra-Gen Dixie Valley, LLC.

Description: Terra-Gen Dixie Valley, LLC submits tariff filing per 35: Open Access Transmission Tariff to be effective 5/14/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–2334–008.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ATC Notice of Succession Amendment I to be effective 2/9/2011.

Filed Date: 03/14/2011.

Accession Number: 20110314–5297.

Comment Date: 5 p.m. Eastern Time on Monday, April 04, 2011.

Docket Numbers: ER11–2700–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): 03–16–11 CMMPA Amendment to be effective 7/28/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5138.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–2825–001.

Applicants: GBC Metals LLC.

Description: GBC Metals LLC submits tariff filing per 35.17(b): GBC_Metals_MBRA Amendment to be effective 4/1/2011.

Filed Date: 03/17/2011.

Accession Number: 20110317–5039.

Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2844–001.

Applicants: Adagio Energy LLC.

Description: Adagio Energy LLC submits tariff filing per 35: Baseline 714 compliance to be effective 4/4/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5049.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–2844–001.

Applicants: Adagio Energy LLC.

Description: Amendment to Application of Adagio Energy LLC.

Filed Date: 03/16/2011.

Accession Number: 20110316–5109.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3100–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits tariff filing per 35.13(a)(2)(iii: Annual PEB/PBOP Filing of Wisconsin Public Service Corporation to be effective 4/1/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5029.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3101–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment C—Methodology to Access Available Transfer Capability to be effective 5/16/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5030.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3102–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: JEA UPS Amendment & Compliance under Docket No. ER11–2477 to be effective 9/24/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5033.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3103–000.

Applicants: Georgia Power Company.

Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: JEA UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5034.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3104–000.

Applicants: Gulf Power Company.

Description: Gulf Power Company submits tariff filing per 35.13(a)(2)(iii: JEA UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3105–000.

Applicants: Mississippi Power Company.

Description: Mississippi Power Company submits tariff filing per 35.13(a)(2)(iii: JEA UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5036.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3106–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Amendments to Schedule 12–Appendix per PJM Board Approval of Cost Allocations to be effective 4/4/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5053.

Comment Date: 5 p.m. Eastern Time on Friday, April 15, 2011.

Docket Numbers: ER11–3107–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FPC UPS Amendment & Compliance under Docket No. ER11–2477 to be effective 9/24/2010.

Filed Date: 03/16/2011.

Accession Number: 20110316–5068.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3108–000.

Applicants: Innovative Energy Systems, LLC.

Description: Innovative Energy Systems, LLC submits tariff filing per 35.13(a)(2)(iii: Innovative Energy Systems MBR Tariff to be effective 3/17/2011.

Filed Date: 03/16/2011.

Accession Number: 20110316–5069.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3109–000.
Applicants: Seneca Energy, II LLC.
Description: Seneca Energy, II LLC submits tariff filing per 35.13(a)(2)(iii: Seneca Energy II MBR Tariff to be effective 3/17/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5070.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3110–000.
Applicants: Crete Energy Venture, LLC.
Description: Crete Energy Venture, LLC submits tariff filing per 35.13(a)(2)(iii: Crete Energy Venture, LLC Reactive Service Rate Schedule to be effective 4/1/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3111–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Orange and Rockland Utilities, Inc. submits tariff filing per 35: Technical re-filing to be effective 6/10/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5081.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3112–000.
Applicants: Garland Power Company.
Description: Garland Power Company submits tariff filing per 35.1: Garland Power FERC Electric Tariff to be effective 12/10/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5087.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3113–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: FPC UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5088.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3114–000.
Applicants: Gulf Power Company.
Description: Gulf Power Company submits tariff filing per 35.13(a)(2)(iii: FPC UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5089.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3115–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.13(a)(2)(iii: FPC UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5090.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3116–000.
Applicants: PJM Interconnection, L.L.C., Delmarva Power & Light Company.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: IMOA between Delmarva & City of Newark, Service Agreement 2771 to be effective 5/15/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5097.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3117–000.
Applicants: Lively Grove Energy Partners, LLC.
Description: Lively Grove Energy Partners, LLC submits tariff filing per 35.12: Market-Based Rate Application to be effective 5/31/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5102.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3118–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: ITC–NEMO IA to be effective 3/17/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5110.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3120–000.
Applicants: Genon Power Midwest, LP.
Description: Genon Power Midwest, LP submits tariff filing per 35.13(a)(2)(iii: Amendment of Rate Schedule to Transfer Reactive Power Revenue Requirement to be effective 6/1/2011.
Filed Date: 03/16/2011.
Accession Number: 20110316–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3121–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filng per 35.13(a)(2)(iii: FPL UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5117.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3122–000.
Applicants: Georgia Power Company.
Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: FPL UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5118.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3123–000.
Applicants: Gulf Power Company.
Description: Gulf Power Company submits tariff filing per 35.13(a)(2)(iii: FPL UPS Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5124.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3124–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.13(a)(2)(iii: FPL Amendment & Compliance Under Docket No. ER11–2477 to be effective 9/24/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5127.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3125–000.
Applicants: Old Dominion Electric Cooperative.
Description: Old Dominion Electric Cooperative submits tariff filing per 35.37: MBR Triennial Filing to be effective 9/13/2010.
Filed Date: 03/16/2011.
Accession Number: 20110316–5142.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2011.

Docket Numbers: ER11–3129–000.
Applicants: Tampa Electric Company.
Description: Notice of Cancellation of Service Schedule J under three individual bilateral interchange contracts of Tampa Electric Company.
Filed Date: 03/17/2011.
Accession Number: 20110317–5047.
Comment Date: 5 p.m. Eastern Time on Thursday, April 07, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(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.

Dated: March 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6920 Filed 3–23–11; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 17, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://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 title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0833.

Title: Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions; Federal Government; State, Local or Tribal Governments.

Number of Respondents and Responses: 6,569 respondents and 71,329 responses.

Estimated Time per Response: 15 minutes (.25 hours)—5 hours.

Frequency of Response: On occasion and one-time reporting requirements; Third Party Disclosure Requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements are contained in section 255 [47 U.S.C. 255] Access By Persons with Disabilities, Public Law 104–104, 110 Stat. 56, added to the Communications Act by the Telecommunications Act of 1996; and section 4(i) (47 U.S.C. 154(i)) of the Communications Act.

Total Annual Burden: 67,092 hours.

Total Annual Cost: $165,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and

Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 "Informal Complaints and Inquiries," in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0833 governs the filing of complaints with the Commission as part of the implementation of section 255 of the Telecommunications Act of 1996, which seeks to ensure that telecommunications equipment and services are available to all Americans, including those individuals with disabilities. As with any complaint procedure, a certain number of regulatory and information burdens are necessary to ensure compliance with FCC rules. The information collection requirements also give full effect to the accessibility policies embodied in section 255.

They do so by requiring telecommunications equipment manufacturers and service providers to make end-user product documentation available in alternate formats, including providing contact information to request such documentation, and by requiring them to demonstrate how they considered accessibility during product development.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–6904 Filed 3–23–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

March 16, 2011.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 23, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0980.

Title: 47 CFR Section 76.66, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,280 respondents; 11,938 responses.

Estimated Time per Response: 1 to 5 hours.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement, Every three years reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 325, 338, 339 and 340 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,146 hours.

Total Annual Cost: 24,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On March 27, 2008 the Commission released a Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, FCC 08–86, CS Docket 00–96. The Commission amended the rules to require satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high definition ("HD") signals in a market in which any station's signals are carried in HD.

The information collection requirements that have been approved by the Office of Management and Budget (OMB) and have not changed since last approved are as follows:

47 CFR Section 76.66(b)(1) states each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section. Satellite carriers are required to carry digital-only stations upon request in markets in which the satellite carrier is providing any local-into-local service pursuant to the statutory copyright license.

47 CFR Section 76.66(b)(2) requires a satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such

satellite carrier is not required to carry the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

47 CFR Section 76.66(c)(3) requires that a commercial television station notify a satellite carrier in writing whether it elects to be carried pursuant to retransmission consent or mandatory consent in accordance with the established election cycle.

47 CFR Section 76.66(c)(5) requires that a noncommercial television station must request carriage by notifying a satellite carrier in writing in accordance with the established election cycle.

47 CFR Section 76.66(c)(6) requires a commercial television broadcast station located in a local market in a noncontiguous State to make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signals that originate as analog signals for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in 47 CFR Section 76.66(c)(2) and 47 CFR Section 76.66(c)(4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signals that originate as an analog signal for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. Moreover, Section 76.66(c) requires a commercial television station located in a local market in a noncontiguous State to provide notification to a satellite carrier whether it elects to be carried pursuant to retransmission consent or mandatory consent.

47 CFR Section 76.66(d)(1)(ii) states an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

47 CFR Section 76.66(d)(1)(iii) states a television station's written notification shall include the:

(A) Station's call sign;

(B) Name of the appropriate station contact person;

(C) Station's address for purposes of receiving official correspondence;

(D) Station's community of license;

(E) Station's DMA assignment; and

(F) For commercial television stations, its election of mandatory carriage or retransmission consent.

47 CFR Section 76.66(d)(1)(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: (A) Those local television stations it will not carry, along with the reasons for such a decision; and (B) those local television stations it intends to carry.

47 CFR Section 76.66(d)(2)(i) states a new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage.

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

47 CFR Section 76.66(d)(2)(ii) states satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

47 CFR Section 76.66(d)(2)(iii) requires a satellite carrier with more than five million subscribers to provide a notice as required by 47 CFR Section 76.66(d)(2)(i) and 47 CFR Section 76.66(d)(2)(ii) to each television broadcast station located in a local market in a noncontiguous State, not later than September 1, 2005 with respect to analog signals and a notice not later than April 1, 2007 with respect to digital signals; provided, however, that the notice shall also describe the carriage requirements pursuant to Section 338(a)(4) of Title 47, United States Code, and 47 CFR Section 76.66(b)(2).

47 CFR Section 76.66(d)(2)(iv) requires that a satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

47 CFR Section 76.66(d)(2)(v) states within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

47 CFR Section 76.66(d)(2)(vi) requires satellite carriers to notify all local stations in a market of their intent to launch HD carry-one, carry-all in that market at least 60 days before commencing such carriage.

47 CFR Section 76.66(d)(3)(ii) states a new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

47 CFR Section 76.66(d)(3)(iv) states within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

47 CFR Section 76.66(d)(5)(i) states beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

47 CFR Section 76.66 (f)(3) states except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

47 CFR Section 76.66 (f)(4) states a satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

47 CFR Section 76.66 (h)(5) states a satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

47 CFR 76.66 (m)(1) states whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

47 CFR 76.66 (m)(2) states the satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

47 CFR 76.66 (m)(3) states a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with § 76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

47 CFR 76.66 (m)(4) states the satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

Non-rule requirement: Satellite carriers must immediately commence carriage of the digital signal of a television station that ceases analog broadcasting prior to the February 17, 2009 transition deadline provided that the broadcaster notifies the satellite carrier on or before October 1, 2008 of the date on which they anticipate termination of their analog signal.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–6905 Filed 3–23–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–08]

Statutory Provisions Affecting State Appraiser Regulatory Programs

AGENCY: Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

ACTION: Notice of Statutory Provisions Affecting State Appraiser Regulatory Programs.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) contains a number of provisions addressing the authority of the Appraisal Subcommittee (ASC) and requirements for States' appraiser regulatory programs. The ASC is issuing Bulletin No. 2011–01 to provide information to the State appraiser regulatory officials on certain changes to the ASC's review process for monitoring State Appraiser Regulatory Programs which will be implemented July 1, 2011, and the statutory provisions that States must implement by July 1, 2013. To provide sufficient time for States to amend their rules, regulations, or operating procedures, the ASC is providing States with a two-year implementation period for requirements addressed in the bulletin.

DATES: *Effective Date:* July 1, 2013 for States' Implementation of Statutory Provisions; July 1, 2011 for Revisions to the ASC's State Compliance Review Process.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, via Internet e-mail at *jim@asc.gov* and *alice@asc.gov,* respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street, NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The ASC issued the following Bulletin 2011–01, Statutory Provisions Affecting State Appraiser Regulatory Programs, on March 18, 2011.

The Appraisal Subcommittee (ASC) is issuing this Bulletin to State Appraiser Regulatory Officials to provide information on compliance with certain provisions in the Dodd-Frank Act. The Dodd-Frank Act amended several sections of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA Title XI). This Bulletin addresses the following provisions:

- Reciprocity.
- Qualification requirements for State licensed appraisers.
- Minimum requirements for trainee appraisers and supervisory appraisers.
- Course approval program of the Appraisal Foundation's Appraiser Qualifications Board (AQB).
- ASC monitoring of funding and staff resources available to State appraiser regulatory programs (State Programs).

This Bulletin outlines changes to the ASC's process for monitoring State Programs, the requirements that States must implement, with statutory references, as well as the effective dates for compliance. Recognizing States may need to amend their rules and/or regulations, or revise their operating procedures, the ASC is providing States with a two-year implementation period for certain of the above the provisions. As part of its State Compliance Review Process, the ASC will continue to evaluate State Programs for compliance with FIRREA Title XI and the ASC Policy Statements, including those that cover topics addressed in the Dodd-Frank Act.

Provisions With a Two-Year Implementation Period

Effective July 1, 2013, the ASC will begin reviewing State Programs for compliance with the following three requirements. Over the next two years, the ASC will monitor States' efforts to implement the requirements.

- *Reciprocity:* Provisions of the Dodd-Frank Act require States to have in place a policy for issuing a reciprocal certification or license to an appraiser from another State under specific conditions. Moreover, a Federally regulated financial institution may not

engage a certified or licensed appraiser to perform an appraisal of a property for a Federally related transaction unless the State wherein the appraiser is credentialed has such a reciprocity policy in place. The State's reciprocity policy must meet the following conditions:

1. The appraiser licensing and certification program of the other State is in compliance with the provisions of FIRREA Title XI; and

2. The appraiser holds a valid certification from a State with requirements for certification or licensing that meet or exceed the certification and licensure standards established by the State where an individual seeks reciprocity.

Statutory and Policy References: FIRREA Title XI § 1122(b), 12 U.S.C. 3351, as amended by the Dodd-Frank Act; FIRREA Title XI § 1122(b), 12 U.S.C. 3351; ASC Policy Statement 6.

• *Certification and Licensing Requirements for State licensed appraisers:* The Dodd-Frank Act defines a "State licensed appraiser" as an individual who has satisfied the requirements for State licensing in a State with criteria for the licensing of a real estate appraiser currently that meet or exceed the minimum criteria issued by the AQB for the licensing of real estate appraisers. Therefore, if a State has a licensed category, the minimum qualification criteria issued by the AQB is mandatory.

Statutory Reference: FIRREA Title XI § 1116(c), 12 U.S.C. 3345, as amended by the Dodd-Frank Act. *See also* AQB Real Property Appraiser Qualification Criteria.

• *Certification and Licensing Requirements—Minimum Qualification Requirements:* The Dodd-Frank Act mandates that any minimum qualification requirements established by a State for individuals in the position of "Trainee Appraiser" and "Supervisory Appraiser" must meet or exceed the minimum qualification requirements of the AQB.

Statutory Reference: FIRREA Title XI § 1116(e), 12 U.S.C. 3345, as amended by the Dodd-Frank Act. *See also* AQB Real Property Appraiser Qualification Criteria.

The AQB's minimum qualification criteria may be subject to amendment from time to time by the AQB and is available at the Appraisal Foundation's Web site under the "Qualifications" tab referencing "Real Property Criteria." (*http://www.appraisalfoundation.org)*

Revisions to State Compliance Review Process

While the Dodd-Frank Act contains a number of mandates addressing the authority and responsibilities of the ASC, the ASC is now formally incorporating the following two requirements into its State Compliance Review process. The revisions take effect on July 1, 2011, and do not necessarily require States to revise rules and/or regulations. States that will need to revise rules and/or regulations should advise the ASC as soon as possible.

• The Dodd-Frank Act requires the ASC to encourage States to accept courses approved by the AQB Course Approval Program. While the ASC currently reviews States' practices in this area as part of the Compliance Review process, the ASC will formally ask a State whether or not the State uses the AQB Course Approval Program as part of a Compliance Review conducted after July 1, 2011. Accordingly, the ASC will continue to encourage States to accept courses approved by the AQB Course Approval Program.

Statutory References: FIRREA Title XI § 1122(h), 12 U.S.C. 3351, as amended by the Dodd-Frank Act.

• The Dodd-Frank Act requires the ASC to monitor a State Program for the purposes of determining whether a State has policies, practices, procedures, funding, and staffing consistent with the purpose of FIRREA Title XI. The ASC's longstanding practice is to monitor the adequacy of a State Program's policies, practices and procedures. Recently, the ASC has been requesting funding and staffing data for State Programs as part of the Compliance Review process and will formally request the information from State Programs for Compliance Reviews conducted after July 1, 2011.

Statutory References: FIRREA Title XI § 1118(a), 12 U.S.C. 3347, as amended by the Dodd-Frank Act.

For further information, contact James R. Park, Executive Director, at (202) 595–7575 or *Jim@ASC.gov,* or Alice M. Ritter, General Counsel, at (202) 595–7577 or *Alice@ASC.gov.*

By the Appraisal Subcommittee.

Dated: March 18, 2011.

Deborah S. Merkle,

Chairman.

[FR Doc. 2011–6969 Filed 3–23–11; 8:45 am]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Thursday, March 31, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Cumberland Coal Resources, LP,* Docket No. PENN 2008–189. (Issues include whether the judge erred in determining that four violations of 30 CFR 75.380(d)(7)(iv), which requires effective escapeway lifelines, were not "significant and substantial.") Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: March 18, 2011.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–7130 Filed 3–22–11; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2011.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Bryn Mawr Bank Corporation,* Bryn Mawr, Pennsylvania; to acquire PWMG Bank and Trust, Inc., Hersey Pennsylvania, a *de novo* non-depository trust company, and thereby engage in trust company activities, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 21, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–6951 Filed 3–23–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 11–05; 2011–0002; Sequence 2]

Federal Travel Regulation (FTR); Relocation Allowances—Relocation Income Tax Allowance (RITA) Tables

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The purpose of this notice is to inform agencies of FTR Bulletin 11–05, which provides the annual changes to the RIT allowance tables necessary for calculating the amount of a transferee's increased tax burden due to an employee's official permanent change of station is now available. FTR Bulletin 11–05 and all other FTR Bulletins can be found at *http://www.gsa.gov/ftrbulletin.* The RIT allowance tables are located at *http://www.gsa.gov/relocationpolicy.*

DATES: This notice is effective March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Office of Governmentwide Policy (M), Office of Travel, Transportation, and Asset Management (MT), General Services Administration at (202) 208–7638 or via e-mail at *ed.davis@gsa.gov.* Please cite FTR Bulletin 11–05.

SUPPLEMENTARY INFORMATION: On June 25, 2008 the General Services Administration (GSA) published FTR Amendment 2008–04 in the **Federal Register** (73 FR 35952) specifying that the General Services Administration (GSA) would no longer publish the RITA tables found in 41 CFR part 301–17 Appendices A through D. The tables will be published at *http://www.gsa.gov/relocationpolicy.*

Dated: March 21, 2011.

Janet Dobbs,

Director, Office of Travel, Transportation & Asset Mgmt.

[FR Doc. 2011–6968 Filed 3–23–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0775]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research to Develop Social Marketing Campaigns—Routine HIV Testing for Emergency Medicine Physicians, *Prevention Is Care (PIC),* and Partner Services—Extension—(0920–0775, expiration 4–30–2011) National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves continuing a formative research study to support CDC's efforts in further developing three social marketing campaigns targeting infectious disease specialists, primary care physicians, and emergency department physicians. The campaigns of focus are: Routine HIV Testing, Prevention Is Care (*PIC*) and Partner Services. The goal of the Routine HIV Testing Campaign is to increase HIV testing rates among individuals who receive care through the emergency department and the objective of the campaign is to make HIV testing a routine part of care provided by emergency medicine physicians. PIC entails encouraging primary care physicians (PCP) and Infectious Disease Specialists who deliver care to patients living with HIV to screen their HIV patients for HIV transmission behaviors and deliver brief messages on the importance of protecting themselves and others by reducing their risky behaviors. The long-term objective of the campaign is to establish *PIC* as the standard of care for persons living with HIV. The goal of the Partner Services component of the PIC social marketing campaign is to make HIV partner services a routine part of medical care. Partner services will greatly enhance the detection and early referral of individuals with HIV infection and will greatly reduce the number of new infections. The study entails conducting the remaining interviews to test creative materials with a sample of emergency medicine physicians for Routine HIV Testing and with PCP and Infectious Disease Specialists for *PIC* and Partner Services. Findings from this study will be used by CDC and its partners to inform current and future program activities.

For Routine HIV Testing, we have conducted a total of 48 interviews and have 24 remaining interviews to conduct. We expect a total of 12 physicians to be screened annually for eligibility. Of the 12 physicians who are screened annually, we expect that 8 will participate in an interview annually.

For PIC, we have conducted 18 interviews and have 144 remaining interviews to conduct. We expect a total of 72 physicians to be screened annually for eligibility. Of the 72 physicians who are screened, we expect that 48 will participate in an interview annually.

For Partner Services, we have conducted 96 interviews and have 78 remaining interviews to conduct. We expect a total of 39 physicians to be screened annually for eligibility. Of the 39 physicians who are screened, we expect that 26 will participate in an interview annually.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 115.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)
Emergency Medicine Physicians	Routine HIV Testing Screener	12	1	10/60
Emergency Medicine Physicians	Routine HIV Testing Interview	8	1	1
Emergency Medicine Physicians	Routine HIV Paper & Pencil Survey	8	1	10/60
Prevention Is Care	PIC Screener	72	1	10/60
Prevention Is Care	PIC Interview	48	1	1
Prevention Is Care	PIC Paper & Pencil Survey	48	1	10/60
Partner Services	Screener	39	1	10/60
Partner Services	Interview	26	1	1
Partner Services	Paper & Pencil Survey	26	1	10/60

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–6936 Filed 3–23–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Required Data Elements for Paternity Establishment Affidavits.

OMB No.: 0970–0171.

Description: Section 466(a)(5)(C)(iv) of the Social Security Act the Act) requires States to develop and use an affidavit for the voluntary acknowledgement of paternity. The affidavit for the voluntary acknowledgement of paternity must include the minimum requirements specified by the Secretary under section 452(a)(7) of the Act. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

Respondents: State and Tribal IV–D agencies, hospitals, birth record agencies and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Acknowledgments	1,167,097	1	0.17	198,406.49
Estimated Total Annual Burden Hours:				198,406.49

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget,

Paperwork Reduction Project.

Fax: 202–395–7285.

E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV.*

Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–6947 Filed 3–23–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children And Families

Announcement of an Award

AGENCY: Office of Policy, Research and Evaluation, ACF, HHS.

ACTION: The Administration for Children and Families (ACF) announces the award of a cooperative agreement to the Congressional Hunger Center in Washington, DC.

C.F.D.A. Number: 93.647.

Statutory Authority: The award is authorized under Section 1110 of the Social Security Act, 42 U.S.C. 613.

SUMMARY: The Administration for Children and Families (ACF), Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development announces the award of a cooperative agreement with the Congressional Hunger Center (CHC) in Washington, DC, to work with ACF programs on hunger and obesity issues for young children. An award in the amount of $3,000 has been made to the CHC.

DATES: March 15, 2011–August 1, 2011.

FOR FURTHER INFORMATION CONTACT: George Askew, MD, FAAP, Senior Policy Advisor for Early Childhood Health and Development, Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development, 901 D Street, SW., Washington, DC 20447. *Telephone:*

202–401–1399; *E-mail: george.askew@acf.hhs.gov.*

Dated: March 16, 2011.

George Askew,

Senior Policy Advisor for Early Childhood Health and Development, Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development.

[FR Doc. 2011–6991 Filed 3–23–11; 8:45 am]

BILLING CODE 4184–07–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; Bone Remodeling and Motor Control.

Date: April 4, 2011.

Time: 1 p.m. to 3 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: Rajiv Kumar, PhD, CHIEF, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@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: March 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6966 Filed 3–23–11; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Severe Asthma Research Program Clinical Coordinating Center.

Date: April 11, 2011.

Time: 11 a.m. to 12 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: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924. 301–435–0280. *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Biology of the Artery Wall and Atherosclerosis.

Date: April 14, 2011.

Time: 9:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin BWI, 1110 Old Elkridge Landing Road, Linthicum, MD 21090.

Contact Person: Charles Joyce, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924. 301–435–0288. *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Comparative Effectiveness Research in Clinical Hypertension Management.

Date: April 14, 2011.

Time: 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health (NIH), Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287. *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Ancillary Studies in Clinical Trials.

Date: April 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287. *carolko@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: March 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6967 Filed 3–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–07]

Notice of Proposed Information Collection: Comment Request; Request for Qualification: Fellowship Placement Program

AGENCY: Office of the Assistant Secretary for Policy Development & Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Office of Policy Development & Research, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3815 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Qualification: Fellowship Placement Program.

OMB Control Number, if applicable: N/A.

Description of the need for the information and proposed use: The Fellowship Placement Program will fund a grantee to help manage and implement the fellowship program. Federal fellows will be selected to provide technical and capacity assistance.

Agency form numbers, if applicable: Standard Form SF–424.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours to complete the application is 24 hours. The number of respondents is estimated to be 10 respondents. The total number of burden hours is 240 hours.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 17, 2011.

Raphael Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–6898 Filed 3–23–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by BOEMRE for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEMRE prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEMRE conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEMRE finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
Apache Corporation, Structure Removal, SEA ES/SR 08–011.	Eugene Island, Block 306, Lease OCS–G 02109, located 75 miles from the nearest Louisiana shoreline.	10/1/2010
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–123.	East Cameron, Block 369, Lease OCS–G 21585, located 123 miles from the nearest Louisiana shoreline.	10/4/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 10–140.	Mustang Island, Block 754, Lease OCS–G 05985, located 18 miles from the nearest Texas shoreline.	10/4/2010
Marathon Oil Company, Revised Exploration Plan, SEA R–5046 AA.	Mississippi Canyon, Block 993, Lease OCS–G 24134, located in the Central Planning Area of the Gulf of 73 miles offshore, south of Mexico, Venice, Louisiana.	10/5/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 09–226.	Ship Shoal, Block 269, Lease OCS–G 01036, located 59 miles from the nearest Louisiana shoreline.	10/5/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 10–010.	Ship Shoal, Block 269, Lease OCS–G 01036, located 59 miles from the nearest Louisiana shoreline.	10/5/2010
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 09–186, 09–187, 09–188, 09–189, 09–190 & 09–191.	East Cameron, Block 272, Lease OCS–G 02047, located 79 miles from the nearest Louisiana shoreline.	10/7/2010
Shell Offshore Inc., Geological & Geophysical Survey, SEA L10–033.	Located in the Central Gulf of Mexico, 42 miles south of Venice, Louisiana	10/7/2010
Seabird Exploration Americas, Inc., Geological & Geophysical Survey, SEA L10–026.	Located in the Central and Western Planning Areas of the Gulf of Mexico, south of Texas and Louisiana.	10/7/2010

Activity/operator	Location	Date
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–136.	Main Pass, Block 226, Lease OCS–G 16508, located 72 miles from the nearest Louisiana shoreline.	10/8/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–159.	Mobile, Block 1002, Lease OCS–G 26183, located 15 miles from the nearest Alabama shoreline.	10/12/2010
Bandon Oil and Gas, LP, Structure Removal, SEA ES/SR 10–151.	South Timbalier, Block 196, Lease OCS–G 01253, located 37 miles from the nearest Louisiana shoreline.	10/12/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–163.	Mobile, Block 1003, Lease OCS–G 26184, located 14 miles from the nearest Alabama shoreline.	10/15/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–161.	Mobile, Block 950, Lease OCS–G 27225, located 23 miles from the nearest Alabama shoreline.	10/15/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–162.	Mobile, Block 951, Lease OCS–G 27226, located 23 miles from the nearest Alabama shoreline.	10/15/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–158.	Mobile, Block 993, Lease OCS–G 27227, located 23 miles from the nearest Alabama shoreline.	10/20/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–160.	Mobile, Block 994, Lease OCS–G 27228, located 23 miles from the nearest Alabama shoreline.	10/20/2010
Pisces Energy LLC, Structure Removal, SEA ES/SR 10–157.	Eugene Island, Block 41, Lease OCS–G 04857, located 15 miles from the nearest Louisiana shoreline.	10/21/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–096.	South Marsh Island, Block 136, Lease OCS–G 02588, located 89 miles from the nearest Louisiana shoreline.	10/26/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–097.	South Marsh Island, Block 149, Lease OCS–G 02592, located 93 miles from the nearest Louisiana shoreline.	10/26/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–164.	South Marsh Island, Block 235, Lease OCS–G 02300, located 14 miles from the nearest Louisiana shoreline.	10/26/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–137.	South Marsh Island, Block 234, Lease OCS–G 02300, located 20 miles from the nearest Louisiana shoreline.	11/8/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–039B.	West Delta, Block 71, Lease OCS–G 00838, located 23 miles from the nearest Louisiana shoreline.	11/9/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–165.	South Marsh Island, Block 255, Lease OCS–G 09564, located 31 miles from the nearest Louisiana shoreline.	11/10/2010
Millennium Offshore Group, Inc., Structure Removal, SEA ES/SR 08–041A.	Eugene Island, Block 190, Lease OCS–G 08434, located 35 miles from the nearest Louisiana shoreline.	11/16/2010
Exxon Mobil Corporation, Structure Removal, SEA ES/SR 08–175A.	High Island, Block 193, Lease OCS–G 03237, located 18 miles from the nearest Texas shoreline.	11/17/2010
El Paso E&P Company, L.P., Structure Removal, SEA ES/SR 10–034.	Eugene Island, Block 372, Lease OCS–G 03786, located 95 miles from the nearest Texas shoreline.	11/18/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–154.	High Island, Block 140, Lease OCS–00518, located 20 miles from the nearest Louisiana shoreline.	11/18/2010
Royal Production Company, Inc., Structure Removal, SEA ES/SR 10–167.	Mobile, Block 829, Lease OCS–G 23683, located 5 miles from the nearest Alabama shoreline.	11/18/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–168.	South Marsh, Block 255, Lease OCS–G 09564, located 25 miles from the nearest Louisiana shoreline.	11/18/2010
Pisces Energy LLC, Structure Removal, SEA ES/SR 10–166.	Eugene Island, Block 41, Lease OCS–G 04857, located 18 miles from the nearest Louisiana shoreline.	11/24/2010
EOG Resources, Inc., Structure Removal, SEA ES/SR 97–081A.	Mobile, Block 914, Lease OCS–G 07846, located 10 miles from the nearest Alabama shoreline.	11/24/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 10–169.	West Delta, Block 32, Lease OCS–00367, located 9 miles from the nearest Louisiana shoreline.	11/24/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–170 & 10–171.	South Pelto, Block 9, Lease OCS–G 02924, located 6 miles from the nearest Louisiana shoreline.	12/1/2010
Fugro Multi Client Services, Inc., Geological & Geophysical Survey, SEA L10–044.	Located in the Central Planning Area of the Gulf of Mexico	12/1/2010
Dynamic Data Services, Inc., Geological & Geophysical Survey, SEA L10–043.	Located in the Western and Central Planning Areas of the Gulf of Mexico	12/1/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 09–216A.	Eugene Island, Block 292, Lease OCS–G 00994, located 73 miles from the nearest Louisiana shoreline.	12/2/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–031A & 10–032A.	Matagorda Island, Blocks 633 & 634, Leases OCS–G 06042 & 07202, located 14 & 18 miles from the nearest Texas shoreline.	12/3/2010
WesternGeco, Geological & Geophysical Survey Application, SEA L10–046.	Located in the Central Planning Area of the Gulf of Mexico	12/3/2010
CCGVeritas, Geological & Geophysical Survey Application, SEA T10–003.	Located in the Western Planning Area of the Gulf of Mexico	12/3/2010
Apache Corporation, Structure Removal, EA ES/SR 10–172, 10–173 & 10–174.	South Pelto, Block 10, Lease OCS–G 02925, located 6, 5, & 7 miles from the nearest Louisiana shoreline.	12/6/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–175, 10–176, 10–177, 10–178 & 10–179.	South Pelto, Block 11, Lease OCS–00071, located 8 miles from the nearest Louisiana shoreline.	12/6/2010
Brandon Oil and Gas, LP, Structure Removal, SEA ES/SR 10–152 & 10–153.	West Cameron, Block 599 & 598, Lease OCS–G 14348 & 17815, located 110 miles from the nearest Louisiana shoreline.	12/8/2010
Chevron U.S.A. Inc., Exploration Plan SEA R–5099.	Green Canyon, Block 640, located south of Louisiana in the Central Planning Area of the Gulf of Mexico.	12/10/2010
WesternGeco, LLC, Geological & Geophysical Survey, SEA L10–035.	Located in the Central Planning Area of the Gulf of Mexico	12/10/2010
WesternGeco, Geological & Geophysical Survey Application, SEA T10–002.	Located in the Western Planning Area of the Gulf of Mexico	12/10/2010

Activity/operator	Location	Date
TDI-Brooks International, Inc., Geological & Geophysical Survey, SEA M10–007.	Located in the Western Gulf of Mexico	12/20/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–189.	South Timbalier, Block 27, Lease OCS–G 01443, located 7 miles from the nearest Louisiana shoreline.	12/28/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 88–064A.	South Timbalier, Block 27, Lease OCS–G 01443, located 7 miles from the nearest Louisiana shoreline.	12/29/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 97–146A.	South Timbalier, Block 27, Lease OCS–G 01443, located 7 miles from the nearest Louisiana shoreline.	12/29/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–190.	South Timbalier, Block 28, Lease OCS–G 01362, located 7 miles from the nearest Louisiana shoreline.	12/29/2010
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 10–194.	Ship Shoal, Block 153, Lease OCS–G 18011, located 27 miles from the nearest Louisiana shoreline.	12/30/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–191, 10–192 & 10–193.	South Timbalier, Block 21, Lease OCS 00263, located 4 miles from the nearest Louisiana shoreline.	12/30/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–180, 10–181, 10–182, 10–183, 10–184, 10–185 & 10–186.	South Timbalier, Block 21, Lease OCS 00263, located 4 miles from the nearest Louisiana shoreline.	12/30/2010

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEMRE at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: February 16, 2011.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2011–6990 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–MR– P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–NXXX; 10120–1113–0000–F5]

Endangered Wildlife; Receipt of Application for Enhancement of Survival Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a permit application; request for comments.

SUMMARY: In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on an application for a permit to conduct enhancement of survival activities with an endangered species.

DATES: To ensure consideration, please send your written comments by April 25, 2011.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicant has applied for a recovery permit to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on this application by local, State, and Federal agencies and the public.

Permit No. TE–36737A

Applicant: Randi A. Rhodes, Honolulu, Hawaii.

The applicant requests a permit to take (capture, band, attach radio transmitters and neck collars, color mark with dye, collect blood, and measure) the Hawaiian coot (*Fulica alai*) in conjunction with monitoring and population biology and life history studies in the State of Hawaii, for the purpose of enhancing its survival.

Public Comments

We are soliciting public review and comment on this recovery permit application. Submit written comments to the Endangered Species Program Manager (*see* address above). 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.

Please refer to the permit number for the application when submitting comments. All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: March 14, 2011.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2011–6517 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2010–N272; 81683–1265–0000–S3]

Seal Beach National Wildlife Refuge, Orange County, CA; Draft Comprehensive Conservation Plan/ Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Seal Beach National Wildlife Refuge for public review and comment. The CCP/EA, prepared under the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuge for the next 15 years. Two step-down plans (an Integrated Pest Management Program and a Mosquito Management Plan), as well as draft compatibility determinations for several existing and proposed public uses, are also available for review and public comment.

DATES: To ensure consideration, we must receive your written comments by May 9, 2011.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: Victoria_Touchstone@fws.gov. Include "Seal Beach CCP" in the subject line of the message.

Fax: Attn: Victoria Touchstone, Refuge Planner, (760) 930–0256.

U.S. Mail: Victoria Touchstone, U.S. Fish and Wildlife Service, San Diego NWR Complex, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Victoria Touchstone, Refuge Planner, at (760) 431–9440, extension 349, or *Victoria_Touchstone@fws.gov;* or Kirk Gilligan, Refuge Manager, at (562) 598–1024. Further information may also be found at *http://www.fws.gov/sandiegorefuges/* (click on Seal Beach NWR CCP link in the refuge planning box at the upper left hand corner of the Web page).

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation.

We initiated the CCP/EA for the Seal Beach National Wildlife Refuge in April 2007. At that time and throughout the process, we requested, considered, and incorporated public scoping comments in numerous ways. Our public outreach has included a **Federal Register** notice of intent published on April 16, 2007 (72 FR 190160), two scoping meetings, two planning updates, and a CCP Web page (*http://www.fws.gov/sandiegorefuges;* click on Seal Beach NWR CCP link). We received two scoping comments during the 30-day public comment period.

Background

Legislation authorizing the establishment of the Seal Beach NWR was signed by President Richard M. Nixon on August 29, 1972. The Refuge boundaries, which are located entirely within Naval Weapons Station Seal Beach, were determined by the Secretary of the Interior with the advice and consent of the Secretary of the Navy. In accordance with the authorizing legislation, the Refuge is to be managed pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and pursuant to plans which are mutually acceptable to the Secretary of the Interior and the Secretary of the Navy. The Refuge was officially established on July 11, 1974, following approval of a general management plan for the Refuge by the Service and the Navy. Refuge purposes include preservation and management of habitat for endangered species (*i.e.,* light-footed clapper rail and California least tern) and preservation of habitat to support migratory waterfowl, shorebirds, and other water birds.

The Refuge, which encompasses approximately 965 acres, includes one of the largest remaining salt marshes along the southern California coast. This coastal wetland supports three Federally listed species, including the endangered light-footed clapper rail, California least tern, and eastern Pacific green sea turtle. The State-listed endangered Belding's savannah sparrow, along with the light-footed clapper rail and California least tern, nest and raise their young within the boundaries of the Refuge. The security needs for Naval Weapons Station Seal Beach require that all public access onto the Refuge be limited to supervised visits, such as monthly public tours and other prescheduled group tours or events.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing the Seal Beach National Wildlife Refuge over the next 15 years. The alternative that appears to best meet the Refuge purposes is identified as the preferred alternative. The preferred alternative has been identified based on the analysis presented in the Draft CCP/EA, which may be modified following the completion of the public comment period based on comments received from other agencies, Tribal governments, nongovernmental organizations, and individuals.

Under Alternative A, the no-action alternative, we would continue to manage the Refuge as we have in the recent past. No changes in wildlife and habitat management or public use would occur.

With Alternative B, current wildlife and habitat management activities would be expanded to include evaluation of current Refuge baseline data for fish, wildlife, and plants; identification of data gaps; implementation of species surveys to address data gaps as staff time and funding allow; restoration of native habitat; and support for new research projects that would benefit Refuge resources and Refuge management. Habitat restoration would focus on increasing salt marsh and intertidal mudflat habitat, with some restoration of wetland/upland transition habitat also proposed. Pest control would be implemented in accordance with an Integrated Pest Management Program, and mosquito monitoring and control would be guided by a Mosquito Management Plan. No changes to the current public-use program would occur.

Alternative C, the preferred alternative, includes the majority of the management activities proposed in Alternative B. The primary differences between the two alternatives include a different focus on habitat restoration and expansion of the opportunities available for wildlife observation on the Refuge. Under Alternative C, the focus of the restoration effort would be on upland and wetland/upland transition habitat, with fewer acres restored to intertidal habitat.

Public Meetings

The locations, dates, and times of public meetings will be listed in a planning update distributed to the project mailing list and posted on the refuge planning Web site at *http://www.fws.gov/sandiegorefuges* (click on the Seal Beach NWR CCP link).

Review and Comment

Copies of the Draft CCP/EA may be obtained by writing to Victoria Touchstone (*see* **ADDRESSES**). Printed copies of the Draft CCP/EA may be viewed at the same address or at the Seal Beach/Mary Wilson Library, 707 Electric Avenue, Seal Beach, CA 90740. The Draft CCP/EA has also been made available for review at *http://www.fws.gov/sandiegorefuges* (click on the Seal Beach NWR CCP link). Comments on the Draft CCP/EA should be addressed to Victoria Touchstone (*see* **ADDRESSES**).

At the end of the review and comment period for this Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP. Before including your address, phone number,

e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 16, 2011.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2011–6907 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N240; 40136–1265–0000–S3]

Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs, Lee County, FL; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs. In the final CCP, we describe how we will manage these refuges for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing via U.S. mail to: Mr. Paul Tritaik, Project Leader, 1 Wildlife Drive, Sanibel, FL 33957. Alternatively, you may request a copy by sending e-mail to: *DingDarling@fws.gov.* The CCP may also be accessed and downloaded from the Service's Web site: *http://www.fws.gov/southeast/planning/*under "Final Documents."

FOR FURTHER INFORMATION CONTACT: Mr. Paul Tritaik, at 239/472–1100 (telephone) or *DingDarling@fws.gov* (e-mail); or Ms. Cheri M. Ehrhardt, at 321–861–2368 (telephone) or *DingDarlingCCP@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs. We started this process through notices in the **Federal Register** on June 27, 2007 (72 FR 35254) and April 2, 2008 (73 FR 17991).

The four refuges currently total about 1,201 acres: Pine Island NWR is 602.24 acres, Matlacha Pass NWR is 538.25 acres, Island Bay NWR is 20.24 acres, and Caloosahatchee NWR is 40 acres. As part of the largest undeveloped mangrove ecosystem in the United States, these four closed refuges provide for native wildlife and habitat diversity through a mix of habitats, including mangrove islands and shorelines, saltwater marshes and ponds, tidal flats, and upland hardwood forests. They also provide protection for 13 Federal-listed and 25 State-listed species, as well as for wading birds, waterbirds, raptors and birds of prey, neotropical migratory birds, shorebirds, and seabirds.

We announce our decision and the availability of the final CCP and FONSI for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

The CCP will guide us in managing and administering Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs for the next 15 years.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 21, 2010 (75 FR 28643). We received comments from the general public, an organization, and governmental agencies, including State and local agencies and a national estuary program. Comments were also submitted through the State Clearinghouse for State agencies.

Selected Alternative

After considering the comments we received, we have selected Alternative C for implementation. The primary focus under Alternative C is migratory birds. Implementing Alternative C is expected to result in increased protection for breeding, nesting, resting, roosting, foraging, and migrating birds on these four refuges. Increased information on a variety of species, suites of species, and habitats will enhance decision-making for these refuges. Further benefits will be realized from increased control of exotic, invasive, and nuisance species. We will coordinate with the partners to address concerns related to the impacts from water quality, quantity, and timing of flows and from climate change and sea level rise. Resource protection will be enhanced, including through increased information about cultural resources on the refuges, resolved boundary issues, additional special designations, improved management of the Island Bay Wilderness Area, improved coordination with the partners to increase awareness and understanding of area residents and area visitors of these closed refuges, and minimized impacts from adjacent uses. To achieve this, we will work with governmental and non-governmental partners, area communities, the "Ding" Darling Wildlife Society, and local businesses, and we will pursue the addition of refuge-specific staff to address management concerns.

Alternative C is considered to be the most effective for meeting the purposes of the refuges and addressing the priority issues facing each refuge, including increasing and changing human population, development of the landscape, recreational uses and demands, and associated impacts; issues and impacts associated with water quality, water quantity, and timing of flows; invasion and spread of exotic, invasive, and nuisance species; climate change impacts; need for long-term protection of important resources; declines in and threats to rare, threatened, and endangered species; insufficient baseline wildlife and habitat

data and lack of a comprehensive habitat management plan; and lack of resources to address refuge needs.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 22, 2010.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on March 21, 2011.

[FR Doc. 2011–6939 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N241; 40136–1265–0000–S3]

J.N. "Ding" Darling NWR, Lee County, FL; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for J.N. "Ding" Darling National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing via U.S. mail to: Mr. Paul Tritaik, Project Leader, 1 Wildlife Drive, Sanibel, FL 33957, or *DingDarling@fws.gov* (e-mail). The CCP may also be accessed and downloaded from the Service's Web site: *http://www.fws.gov/southeast/planning/*under "Final Documents."

FOR FURTHER INFORMATION CONTACT: Mr. Paul Tritaik, at 239/472–1100 (telephone) or *DingDarling@fws.gov* (e-mail); or Ms. Cheri M. Ehrhardt, at 321/861–2368 (telephone) or *DingDarling@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for J.N. "Ding" Darling NWR. We started this process through notices in the **Federal Register** on June 27, 2007 (72 FR 35254) and April 2, 2008 (73 FR 17991).

The 6,406-acre refuge supports hundreds of species of wildlife and plants, providing protection for 14 Federal-listed and 49 State-listed species, migratory birds, and native wildlife and habitat diversity through a mix of habitats, including tropical hardwood forests, beaches, mangrove swamps, mixed wetland shrubs, salt marshes, open waters and seagrass beds, and lakes and canals. The refuge holds several special designations, including Wilderness Area, Research Natural Area, Marine Protected Area, Florida Important Bird Area, and Outstanding Florida Water. Annual visitation to the refuge exceeds 700,000.

We announce our decision and the availability of the final CCP and FONSI for J.N. "Ding" Darling NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

The CCP will guide us in managing and administering J.N. "Ding" Darling NWR for the next 15 years. The following compatibility determinations are available in the CCP: (1) Wildlife observation and photography—including walking, hiking, motorized and non-motorized boating, and motorized and non-motorized trail use; (2) environmental education and interpretation—including walking, hiking, motorized and non-motorized boating, and motorized and non-motorized trail use; (3) fishing—including motorized and non-motorized boating and non-motorized trail use; (4) research; (5) commercial services; (6) commercial photography; (7) mosquito control; and (8) commercial bait fishing—including phasing out this use within the 15-year life of the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on May 17, 2010 (75 FR 27576). We received comments from local citizens, a local business, organizations, and State and local governmental agencies. Comments were also submitted through the State Clearinghouse for State agencies.

Selected Alternative

After considering the comments we received, we have selected Alternative C for implementation. The primary focus under Alternative C is migratory birds. Implementing Alternative C is expected to result in increased protection for breeding, nesting, resting, roosting, foraging, and migrating birds on the refuge. Increased information on a variety of species, suites of species, and habitats will enhance decision-making for the refuge. Further benefits will be realized from increased control of exotic, invasive, and nuisance species. We will coordinate with the partners to address concerns related to the impacts from water quality, quantity, and timing of flows and from climate change and sea level rise. Resource protection will be enhanced, including through increased information about cultural resources on the refuge, increased protection of cultural resources, additional special designations, improved management of the J.N. "Ding" Darling Wilderness Area, improved coordination with the partners to increase ethical outdoor behavior, enhanced visitor services programs, and addition of visitor facilities. To achieve this, we will work with governmental and non-governmental partners, area communities, the "Ding" Darling Wildlife Society, and local businesses, and we will pursue the addition of staff to address management concerns.

Alternative C is considered to be the most effective for meeting the purposes of the refuge and addressing the priority issues facing the refuge, including increasing and changing human population, development of the landscape, recreational uses and demands, and associated impacts; issues and impacts associated with water

quality, water quantity, and timing of flows; invasion and spread of exotic, invasive, and nuisance species; climate change impacts; need for long-term protection of important resources; declines in and threats to rare, threatened, and endangered species; insufficient baseline wildlife and habitat data and lack of comprehensive habitat management plan; and lack of resources to address refuge needs.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 22, 2010.

Mark J. Musaus,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on March 21, 2011.

[FR Doc. 2011–6937 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N050; 81331–1334–8TWG–W4]

Wildlife and Hunting Heritage Conservation Council Teleconference; Cancellation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference; cancellation.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our cancellation of a public teleconference of the Wildlife and Hunting Heritage Conservation Council (Council). The teleconference was to have taken place on March 23, 2011. When we reschedule the teleconference, we will announce the new date and time to the public.

DATES: The teleconference was scheduled to be held March 23, 2011. We will reschedule the teleconference at a later date.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 N. Fairfax Dr., Mailstop 3103–AEA, Arlington, VA 22203; (703) 358–2639 (phone); (703) 358–2548 (fax); or *joshua_winchell@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Council was formed in February 2010, to provide advice about wildlife and habitat conservation endeavors. For more information about the Council, see our March 4, 2011, **Federal Register** notice (76 FR 12130), or contact Joshua Winchell, Council Coordinator (**FOR FURTHER INFORMATION CONTACT**). Background information on the Council is also available at *http://www.fws.gov/whhcc.*

In a **Federal Register** notice published on March 4, 2011, we announced a Council teleconference to take place on March 23, 2011. However, we now announce that we must cancel that teleconference. We plan to reschedule the teleconference. When we reschedule, we will announce the new date and time in a new notice in the **Federal Register**. Primary objectives and agenda items of the teleconference will remain the same.

Dated: March 14, 2011.

Rowan W. Gould,

Acting Director.

[FR Doc. 2011–6899 Filed 3–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0311–6929; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 5, 2011. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW.., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 8, 2011.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ARIZONA

Maricopa County

Sands Estate Historic District, Roughly bounded by W Belmont Ave, W Morten Ave, Orangewood Ave, and W Vista Ave, Glendale, 11000192

CALIFORNIA

Los Angeles County

Zane Grey Pueblo, 199 Chimes Tower Rd, Avalon, 11000189

KANSAS

McPherson County

Inman I.O.O.F. Hall, 100 N Main, Inman, 11000195

Osage County

Schuyler Grade School (Public Schools of Kansas MPS), 117 S Dacotah, Burlingame, 11000193

Sedgwick County

Wilson—Boyle House (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957), 225 N Roosevelt, Wichita, 11000194

MISSOURI

Howell County

Mount Zion Lodge Masonic Temple, 304 E Main St, West Plains, 11000188

Jasper County

Main and Eight Streets Historic District (Historic Resources of Joplin, Missouri), Portions of the 800 and 900 block of S Main St, Joplin, 11000185

Pettis County

G and G Veterinary Hospital, 711 W Main, Sedalia, 11000186

Heard, John T. and Lillian, House, 200 W Broadway, Sedalia, 11000187

NEW HAMPSHIRE

Hillsborough County

Pelham Library and Memorial Building, 5 Main St, Pelham, 11000191

Rockingham County

Salem Common Historic District, 304, 310, 312 Main St, Salem, 11000190

[FR Doc. 2011–6970 Filed 3–23–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–565]

Certain Ink Cartridges and Components Thereof; Institution of Consolidated Advisory Opinion and Modification Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted consolidated advisory opinion and modification proceedings.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon; Epson America, Inc. of California; and Seiko Epson Corporation of Japan (collectively "Epson"). 71 FR 14720 (March 23, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 ("section 337") in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1–3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; claims 1, 10 and 14 of U.S. Patent No. 6,955,422; claim 1 of U.S. Patent No. 7,008,053; and claims 21, 45, 53 and 54 of U.S. Patent No. 7,011,397. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default.

On March 30, 2007, the presiding administrative law judge (ALJ) issued a final ID in the investigation finding a violation of section 337 with respect to certain respondents. He found the asserted claims valid and infringed by certain respondents' products. He recommended issuance of a general exclusion order and cease and desist orders directed to certain respondents and bond in the amount of $13.60 per cartridge during the Presidential review period.

On October, 19, 2007, after review, the Commission made its final determination in the investigation, finding a violation of section 337. The Commission issued a general exclusion order, limited exclusion order, and cease and desist orders directed to several domestic respondents. The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d), (f), and (g) did not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential review period would be $13.60 per cartridge for covered ink cartridges.

On December 13, 2010, two respondents in the underlying investigation, Ninestar Technology Co., Ltd. and Ninestar Technology Company, Ltd. ("Ninestar U.S.") (collectively, "Ninestar"), filed a joint request for an advisory opinion proceeding and a petition for modification of the general exclusion order and a cease and desist order issued by the Commission to Ninestar U.S. On February 3, 2011, Epson filed a petition for modification of the general exclusion order and the cease and a desist order issued to Ninestar U.S.

After examining the submissions by Ninestar and Epson, the Commission has determined to institute consolidated advisory opinion and modification proceedings to determine whether Ninestar's R–Series ink cartridges infringe any of the patent claims included in the general exclusion order or the cease and desist order issued to Ninestar U.S. in the investigation and what, if any, modifications to the general exclusion order and/or the cease and desist order issued to Ninestar U.S. are appropriate.

The Commission has referred the consolidated proceedings to the Chief Administrative Law Judge to designate a presiding administrative law judge. The following entities are named as parties to the proceedings: (1) Complainant Epson; (2) respondents Ninestar Technology Co., Ltd. and Ninestar U.S. The Office of Unfair Import Investigations will not be participating as a party in this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.76 and 210.79 of the Commission's Rules of Practice and Procedure (19 CFR 210.76, 210.79).

By order of the Commission.

Issued: March 18, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–6953 Filed 3–23–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–767]

Certain Glassware; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 18, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Boston Beer Corporation of Boston, Massachusetts. A supplement to the complaint was filed on March 14, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain glassware by reason of infringement of U.S. Patent No. D582,213 ("the '213 patent") and U.S. Patent No. D569,189 (" the '189 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Dockets Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 18, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain glassware that infringes the claims of the '213 patent and the '189 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Boston Beer Corporation, One Design Center Place, Boston, MA 02210.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

1 Source Signature Glassware, Inc., 81 W. Boston Street, Chandler, AZ 85225.

di Sciacca Co., 81 W. Boston Street, Chandler, AZ 85225.

San Tan Brewing Co., 8 South Marcos Place, Chandler, AZ 85225.

(c) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 18, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–6959 Filed 3–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before April 25, 2011.

ADDRESSES: You may submit your comments, identified by the petition's "docket number" on the subject line, using any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: April E. Nelson, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: April E. Nelson, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of

achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2010–040–C.

Petitioner: Kingston Mining, Inc., Route 1, Box 76–C, Scarbro, West Virginia 25917.

Mine: Kingston No. 1 Mine, MSHA I.D. No. 46–08625, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit deluge-type water spray systems to be used without blow-off dust covers on the nozzles. The petitioner states that: (1) Weekly inspections and functional tests of its complete deluge-type water spray system are currently being conducted at the mine; (2) each nozzle is provided with a blow-off dust cover; (3) due to frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; and (4) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner proposes to continue its weekly inspection and functional testing of the complete deluge-type water spray system at the Kingston No. 1 Mine, and to remove the blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as would be provided by the existing standard.

Docket Number: M–2010–041–C.

Petitioner: Twentymile Coal LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1714–2(b) (Self-rescue devices; use and location requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow additional outby storage caches of Self-Contained Self-Rescuers (SCSR's) to be stored along normal travelways in lieu of carrying one-hour SCSR units by pumpers, examiners, and other persons who do not have a fixed work location. The petitioner seeks modification of the existing standard that requires that self-rescue devices be worn or carried at all times by each person when underground. The petitioner states that: (1) Twentymile utilizes three entry gateroads for longwall mining. (2) Gateroad lengths range from 6,000 feet to 20,000 feet. (3) Main entry lengths range from 4,000 feet to 8,500 feet. (4) Mine examiners travel (walk) belt line entries three times per day. (5) Maximum SCSR cache spacing is 5700 feet along primary and alternate escapeways. The petitioner further states that: (a) Additional SCSR outby storage caches will be placed a maximum of 2,000 feet apart in beltlines and return air courses; (b) these additional SCSR outby storage caches will have no less than two units available for pumpers, examiners, and other persons who do not have a fixed work location and who would be expected to be traveling in the area; (c) pumpers, examiners, and other persons who do not have a fixed work location traveling along the normal travel routes will at no time be farther than 1,000 feet from a one-hour SCSR; (d) all full time personnel are issued and wear or carry an Ocenco M–20 SCSR; (e) individuals would carry a one-hour SCSR with them along with the Ocenco M–20–SCSR while traveling in mantrips or other mobile equipment; and (f) individuals traveling in mantrips or other mobile equipment will at no time be farther than 1425 feet from additional SCSRs. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Docket Number: M–2010–043–C.

Petitioner: Twentymile Coal LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1714–4(b) (Additional self-contained self-rescuers (SCSRs).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow additional mantrip storage caches of Self-Contained Self-Rescuers (SCSRs) to be stored along travelways in lieu of additional SCSRs carried and stored on mantrips or mobile equipment. The petitioner seeks modification of the existing standard that requires additional SCSRs on mantrips. The petitioner states that: (1) Twentymile utilizes diesel pick-up mantrips and utility vehicles and diesel material haulage equipment for underground transportation; (2) Normal mantrip travel time to operating sections is less than 1 hour; (3) During the winter months, outside temperatures reach 40 degrees below zero Fahrenheit for extended periods of time; (4) The manufacturer recommends the unit be stored at temperatures above 10 degrees below zero Fahrenheit; (5) Because of such temperatures and the storage of SCSRs on the mantrips, there is a potential for damage to the SCSRs while they are outside the mine; (6) Maximum SCSR cache spacing is 5700 feet along primary and alternate escapeways; (7) Twentymile propose to provide additional SCSRs along travelways in lieu of additional SCSRs carried and stored on mantrips or mobile equipment. In that regard, Twentymile proposes the following alternative to providing additional oxygen along travelways: (a) the petitioner will provide additional SCSR mantrip storage caches placed half way between the existing escapeway SCSRs required by 30 CFR 75.1502 and 30 CFR 75.1714–4(c); (b) these additional SCSR mantrip storage caches will have no less than the maximum number of individuals that can be carried by the largest capacity personnel carrier; (c) all full time personnel are issued and shall wear or carry an Ocenco M–20 SCSR; (d) individuals will carry a one-hour SCSR with them along with the Ocenco M–20 SCSR while traveling in mantrips or other mobile equipment; (e) individuals traveling in mantrips or other mobile equipment will at no time be farther than 1425 feet from additional SCSRs. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Dated: March 18, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–6918 Filed 3–23–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before April 25, 2011.

ADDRESSES: You may submit your comments, identified by the petition's "docket number" on the subject line, using any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov*. Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: April E. Nelson, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: April E. Nelson, Acting Director, Office of Standards, Regulations, and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–001–C.

Petitioner: Left Fork Mining Company, Inc., P.O. Box 13, Arjay, Kentucky 40902.

Mines: Straight Creek No. 1 Mine, MSHA I.D. No 15–12564, located in Bell County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit evaluation points to be established for weekly evaluation of the affected area of the intake return. The petitioner states that: (1) This petition is necessary for the intake slope entry due to a 26 degree incline. Three evaluation points located along the slope entry will be established for weekly evaluation of the affected area; (2) a certified person will examine each of the evaluation points at least every 7 days, including: (a) examine for hazards on the approaches to and at the evaluation points: (b) evaluate and measure the quality and quantity of air flowing past the evaluation points to determine the methane, oxygen, and carbon monoxide concentrations using a MSHA approved hand-held device; (c) measure air quantity using an appropriately calibrated anemometer; (d) not permitting harmful gases to accumulate in exceed of the legal limits for a return air course; (e) if an increase of 0.5 percent methane above the previous reading or a 10 percent unplanned change in airflow quantity from the previous reading is determined at these evaluation points, an immediate examination and evaluation of the cause will be conducted; (f) a date board will be provided at each evaluation point where a certified examiner will record the date, time, and his or her initials; and (g) the results of each weekly examination in a book maintained on the surface; (3) the permanent ventilation controls and evaluation points will be shown on the annual mine ventilation map in accordance with 30 CFR 75.372; and (4) all evaluation points and approaches to the evaluation points will be maintained in a safe condition at all times. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2011–002–C.

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mines: Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania. Bergholz Mine, MSHA I.D. No. 33–04565, located in Jefferson County, Ohio. Cherry Tree Mine, MSHA I.D. No. 36–09224; Harmony Mine, MSHA I.D. No. 36–09477; Penfield Mine, MSHA I.D. No. 36–09355, located in Clearfield County, Pennsylvania. Clementine Mine, MSHA I.D. No. 36–08862; Darmac #2 Mine, MSHA I.D. No. 36–08135; Dutch Run Mine, MSHA I.D. No. 36–0870; Logansport Mine, MSHA I.D. No. 36–08841; Tracy Lynne Mine, MSHA I.D. No. 36–08603, located in Armstrong County, Pennsylvania. Heilwood Mine, MSHA I.D. No. 36–09407; Knob Creek Mine, MSHA I.D. No. 36–09394; Lowry Mine, MSHA I.D. No. 36–09287; Tom's Run Mine, MSHA I.D. No. 36–08525, located in Indiana County, Pennsylvania. Little Toby Mine, MSHA I.D. No. 36–08847, located in Elk County, Pennsylvania. Mine 78, MSHA I.D. No. 36–09371, located in Somerset County, Pennsylvania. Tusky Mine, MSHA I.D. No. 33–04509, located in Tuscarawas County, Ohio. Twin Rocks Mine, MSHA I.D. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment) and 30 CFR 18.35(a)(2) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of MSHA approved five (5) conductor 10 American Wire Gauge (AWG) cable (SO cable) with a diameter of 0.77 with a tolerance of +/− 0.03. The petitioner states that: (1) The cable will be hung on insulated hangers for the entire length at all times; (2) within 60 days after the proposed decision and order becomes final, proposed revisions for its approved 30 CFR part 48 training plan will be submitted to the District Manager. In addition, the proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the proposed decision and order. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2011–003–C.

Petitioner: Frasure Creek Mining, LLC, P.O. Box 142, Justice, West Virginia 24851.

Mine: Deep Mine No. 11, MSHA I.D. No. 46–09329, located in Fayette County, West Virginia, and Isaban Deep Mine No. 3, MSHA I.D. No. 46–09245, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. The petitioner proposes to conduct a weekly inspection and functional test of its complete deluge-type spray system. The petitioner states that: (1) The system consists of an average of thirty (30) sprays along each of approximately ten (10) primary belt-conveyor drives and an average of sixty (60) sprays along each of eight (8) secondary drives; (2) the nozzles are currently provided with blow-off dust covers, but the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; and (3) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners than the existing standard.

Docket Number: M–2011–001–M.

Petitioner: Carmeuse Industrial Sands, P.O. Box 429, Brady, Texas 76825.

Mine: Brady Plant, MSHA I.D. No. 41–01371, located in McCulloch County, Texas.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit the implementation of a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH). This process utilizes controlled compressed air for the purpose of cleaning miners' dust laden clothing. The petitioner states: (1) Only miners trained in the operation of the NIOSH-tested clothes cleaning booth process will be permitted to use the process. (2) Clothes cleaning booth process training will be incorporated into the Part 46 training plan. (3) All miners entering the NIOSH-tested clothes cleaning booth will be required to wear full seal goggles for eye protection, ear plugs or muffs for hearing protection, and fit-tested respirators with N100 filters for respiratory protection. (4) The clothes cleaning booth will have a caution sign, conspicuously posted, indicating that the use of respirators, hearing protection, and goggles are required before entering the booth. (5) Air pressure through the spray manifold will be limited to 30 pounds per square inch. A lock-box with a single key controlled by the Plant Manager will be used to prevent tampering with the regulator. (6) The air spray manifold will consist of 1.5 inch schedule 80 pipe, which has a failure pressure of 1,300 pounds per square inch, capped at the base and actuated by an electrically-controlled ball valve at the top. (7) The air spray manifold will contain 26 total nozzles of which 25 will be 18.4 SCFM @ 3 psig and the 26th and lowermost nozzle will be 19.2 SCFM @ 30 psig. (8) The uppermost spray nozzle will be located at a height of not more than 56 inches. Those miners with a shoulder height less than 56 inches will use mechanical air spray deflectors, which are quick, effective, and easy to use. (9) Miners will be use side deflectors to eliminate the possibility of incidental contact with the air nozzles during use of the clothes cleaning booth. (10) Spraying Systems Company Nozzle No. AA727–23 contains a recessed design to provide air escape should the nozzle be accidentally placed against a surface. (11) An electrically actuated valve will be inter-locked into the bag house dust collector to prevent use of the clothes cleaning booth if the dust collection system is not functioning or inoperable. (12) The clothes cleaning booth will be fitted with a stand-alone dust collection system. (13) Airflow through the clothes cleaning booth will be sufficient to maintain negative pressure during its use in order to prevent contamination of the environment outside of the booth. (14) The air receiver tank supplying air to the manifold system will be of sufficient volume to permit not less than 20 seconds of continuous cleaning time. (15) Airflow through the booth will be in the downward direction, thereby moving contaminants away from the miner's breathing zone. (16) Miners entering the clothes cleaning booth will perform regular user checks examining the valves and nozzle for damage of malfunction and ensure that the door is fully closed before opening the air valve. (17) Periodic maintenance checks will be performed in accordance with the NIOSH recommendation contained within the "Clothes Cleaning Process Instruction Manual." No significant safety or health concerns have been identified because the eyes are protected by full seal goggles, the skin is protected by work clothes, hearing is protected by plugs or muffs, and the lungs are protected by a respirator, and air is limited to 30 pounds per square inch, which is the Occupational Safety and Health Administration (OSHA) limit for cleaning purposes. The petitioner asserts that the cleaning process will provide a more effective clothes cleaning method and a direct reduction of a miners' exposure to respirable crystalline silica dust, thus reducing their health risks while providing no less a degree of safety than that provided by the standard.

Dated: March 18, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–6919 Filed 3–23–11; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–024)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting from the aeronautics community and other persons research and technical information relevant to program planning.

DATES: Thursday, April 14, 2011, 8:30 a.m. to 3:30 p.m., Local Time; Friday, April 15, 2011, 8:30 a.m. to 11:15 a.m., Local Time.

ADDRESSES: Thursday, April 14, 2011—NASA Dryden Flight Research Center (DFRC), Lilly Drive Building 4825, Edwards, CA 93523. Friday, April 15, 2011—The AERO Institute, 38256 Sierra Highway, Palmdale, CA 93550.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by Webex and telephone

should contact Ms. Susan L. Minor at (202) 358–0566 for the Web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- NASA Dryden Flight Research Center Overview.
- Aeronautics Budget update.
- Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) planning.
- Air Traffic Management technology demonstration discussion.
- Green aviation research.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. For the meeting at DFRC, attendees will be requested to comply with Edwards Air Force Base (AFB) and NASA Security. To get to DFRC, you will first need to pass through one of three Edwards AFB gates, guarded by Military police. When you arrive at a gate entering Edwards AFB, state that you are attending the NASA Advisory Council Aeronautics Committee session in the NASA Integrated Support Facility (ISF—Bldg 4825) before receiving an access badge. Arrive early and be prepared to park your car at the gate and go inside the guard building. You must have proof of automobile insurance showing the effective date and expiration date, a valid driver's license with photo, and a current vehicle registration to gain access to Edwards AFB. While on base, be sure to wear your seatbelt and drive no faster than the posted speed limits. Also, do not talk on your cell phone without a hands-free device.

All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable), Permanent Resident Alien card number and expiration date (if applicable), and place and date of entry into the U.S., to Carmen Arevalo, Office of the Center Director, NASA Dryden Flight Research Center, no less than 10 working days prior to the meeting. Non-U.S. citizens will need to show their Passport or Permanent Resident Alien card to enter NASA Dryden Security Office and must state they are attending the NASA Advisory Council Aeronautics Committee session in the NASA DFRC ISF (Bldg 4825). For questions, please contact Ms. Carmen Arevalo at (661) 276–3102, *carmen.arevalo-1@nasa.gov*.

March 17, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–6897 Filed 3–23–11; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0035]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Design Information Questionnaire—IAEA—N71 and associated Forms N–72, N–73, N–74, N–75, N–91, N–92, N–93, N–94.

2. *Current OMB approval number:* 3150–0056.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the NRC to submit the form.

5. *The number of annual respondents:* 1.3.

6. *The number of hours needed annually to complete the requirement or request:* 300 reporting hours.

7. *Abstract:* In order for the United States to fulfill its responsibilities as a participant in the U.S./International Atomic Energy Agency (IAEA) Safeguards Agreement, the NRC must collect information from licensees about their installations and provide it to the IAEA. Licensees of facilities that appear on the U.S. eligible list and have been notified in writing by the NRC are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form) or Form N–91, to provide information concerning their installation for use of the IAEA.

Submit, by May 23, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied, for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2011–0035. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2011–0360. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 14th day of March 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–6964 Filed 3–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company; Notice of Availability of Application for a Combined License

On March 28, 2008, Southern Nuclear Operating Company (SNC), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners (Dalton Utilities), herein referred to as the applicant, filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the Code of Federal Regulations (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for combined licenses (COLs) for two AP1000 advanced passive pressurized water reactors at the Vogtle Electric Generating Plant (VEGP) site located in Burke County, Georgia. The reactors are to be identified as VEGP Units 3 and 4. The application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements found in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application cover letter is ML081050133. Other publicly available documents related to the application, including revisions filed after the initial submission, are also posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html*.

Dated at Rockville, Maryland this 17th day of March, 2011.

For the Nuclear Regulatory Commission.

Ravindra Joshi,

Senior Project Manager, AP10000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactor.

[FR Doc. 2011–6844 Filed 3–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Notice of Availability of the Final Supplemental Environmental Impact Statement for Vogtle Electric Generating Plant Units 3 and 4; Combined License Application Review

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final supplemental environmental impact statement (FSEIS), NUREG–1947, Final Supplemental Environmental Impact Statement for Combined Licenses (COLs) at the Vogtle Electric Generating Plant Units 3 and 4: Final Report."

The draft supplemental EIS was published in September 2010; a notice of availability appeared in the **Federal Register** on September 3, 2010 (75 FR 54146). The purpose of this notice is to inform the public that the FSEIS is available for public inspection. The FSEIS may be viewed online at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1947.* In addition, the FSEIS is available for inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or from the NRC Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC Electronic Reading Room (ERR) link. The ADAMS accession number for the FSEIS is ML11076A010. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the PDR reference staff by telephone at 1–800–397–4209/1–301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

In addition, the Burke County Library located at 130 Highway 24 So., Waynesboro, GA 30830–4572 has also agreed to make the FSEIS available to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Mallecia Sutton, Project Manager, Environmental Projects Branch 1, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Mail Stop T7103, Washington, DC 20555. Ms. Sutton may also be contacted at 301–415–0673 or via e-mail to *Mallecia.Sutton@nrc.gov.*

Dated at Rockville, Maryland this 18th day of March 2011.

For the Nuclear Regulatory Commission.

Nilesh Chokshi,

Deputy Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2011–6965 Filed 3–23–11; 8:45 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 Tuesday, March 29, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, March 29, 2011 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
An adjudicatory matter; 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: March 22, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–7145 Filed 3–22–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register citation of previous announcement: [76 FR 15352, March 21, 2011]

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: March 24, 2011 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following matter will also be considered during the 2 p.m. Closed Meeting scheduled for Thursday, March 24, 2011:

Consideration of amicus participation.

Commissioner Casey, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

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: March 22, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–7143 Filed 3–22–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Circadian, Inc., Clean Energy Combustion, Inc. (n/k/a Clean Energy Combustion Systems, Inc.), Collectible Concepts Group, Inc., Communitronics of America, Inc. (n/k/a RPM Advantage, Inc.), and ConSyGen, Inc., Order of Suspension of Trading

March 22, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Circadian, Inc. because it has not filed any periodic reports since the period ended September 30, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Clean Energy Combustion, Inc. (n/k/a Clean Energy Combustion Systems, Inc.) because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Collectible Concepts Group, Inc. because it has not filed any periodic reports since the period ended November 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Communitronics of America, Inc. (n/k/a RPM Advantage, Inc.) because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ConSyGen, Inc. because it has not filed any periodic reports since the period ended November 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 22, 2011, through 11:59 p.m. EDT on April 4, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–7069 Filed 3–22–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64096; File No. SR–Phlx–2011–34]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

March 18, 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 March 15, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to replace its Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees, in Section III of the Fee Schedule, with Singly Listed Options[3] Fees. Also, the Exchange is proposing to create new fees for equities, exchange-traded funds ("ETFs") and Holding Company Depository Receipts ("HOLDRS") which are not listed on another exchange.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create new fees titled "Singly Listed Options" to recoup the increased costs associated with Singly Listed options as compared with Multiply Listed options.

The Exchange currently assesses fees for equity options as specified in Section II of the Fee Schedule titled "Equity Options Fees." Section II includes options overlying equities, ETFs HOLDRS, BKX [4], RUT [5], RMN [6], MNX [7] and NDX [8]. The Exchange currently assesses fees for sector index options and U.S. Dollar-Settled foreign currency options as specified in Section III of the Exchange's Fee Schedule titled "Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees."

The Exchange is proposing to rename Section III as "Singly Listed Options" and create fees, which would apply to options overlying currencies,[9] equities, ETFs, indexes, and HOLDRS not listed on another exchange.[10] The proposed fees are as follows:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer
Options Transaction Charge	$.35	$.45	$.35	$.45	$.45

The Exchange would remove the Sector Index Option Fees and the U.S. Dollar-Settled Foreign Currency Options Fees from Section III of the Exchange's Fee Schedule. Sector index options and U.S. Dollar-Settled foreign currency options would be subject to the proposed fees in Section III.[11] Currently, the sector index options are assessed the following fees:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer
Options Transaction Charge	$.44	$.35	$.35	$.30	$.45

U.S. Dollar-Settled foreign currency options, which include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV, are assessed the following fees:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer
Options Transaction Charge	$.44	$.30	$.30	$.30	$.45

In addition, the Exchange proposes to assess Singly Listed equities, ETFs and HOLDRS the proposed fees in Section III.[12] Singly listed equities, ETFs and HOLDRS are currently subject to the fees in Section II.[13] The Exchange currently assesses equity options, including options overlying equities, ETFs, HOLDRS, BKX, RUT, RMN, MNX and NDX, the following fees which are located in Section II of the Exchange's Fee Schedule:

[4] BKX represents the KBW Bank Index.

[5] RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

[6] RMN represents options on the one-tenth value Russell 2000® Index [6] (the "Reduced Value Russell Index" or "RMN").

[7] MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

[8] NDX represents options on the Nasdaq 100 Index [8] traded under the symbol NDX ("NDX").

[9] The applicable U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV ("Currencies").

[10] The Exchange receives an overnight file from The Options Clearing Corporation, the Data Distribution Service feed, which provides the Exchange a list of options which are Singly and Multiply Listed. The Exchange provides its members with a symbol directory that indicates whether a security is Singly or Multiply Listed. This information, which is available on the exchange's Web site, is updated daily. In the event that a Singly Listed option becomes Multiply Listed, the option would be assessed the fees in Section II of the Fee Schedule.

[11] The Exchange's indexes and currencies, which are subject to the fees in Section III, are only listed on the Exchange and therefore Singly Listed.

[12] This fee proposal would not impact any equity options transacted in any of the symbols which are listed in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols." The Exchange is not amending Section I.

[13] Multiply Listed options overlying equities, ETFs, HOLDRS, BKX, RUT, RMN, MNX and NDX would continue to be subject to the fees in Section II. For purposes of this filing, a Multiply Listed security means an option that is listed on more than one exchange.

	Customer	Professional	Specialist, ROT, SQT and RSQT		Broker-dealer		Firm
			Electronic	Non-electronic	Electronic	Non-electronic	
Options Transaction Charge (Penny Pilot)	$.00	$.20	$.22	$.25	$.45	$.25	$.25
Options Transaction Charge (non-Penny Pilot)	.00	.20	.23	.25	.45	.25	.25
Options Surcharge in RUT, RMN, MNX and NDX	N/A	N/A	.15	.15	.15	.15	.15
Options Surcharge in BKX	N/A	N/A	.10	.10	.10	.10	.10

The Exchange is proposing to amend the Equity Options Fees in Section II by adding the words "which are Multiply Listed" to the title of Section II to clarify that Section II fees apply to Multiply Listed options.[14] The Exchange also proposes to amend this title consistently throughout the Fee Schedule. The Exchange also proposes to amend Section IV of the Exchange's Fee Schedule, titled "PIXL Pricing," to replace references to "Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Options" with the words "Singly Listed Options." The Exchange is also proposing to amend the Table of Contents to reflect the proposed title for Section III, "Singly Listed Options."

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(4) of the Act[16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed fees for Singly Listed Options are equitable because the Exchange is seeking to recoup the operational costs for Singly Listed options, which costs are higher than those for Multiply Listed options.[17] In addition, the Exchange believes that the proposed fees for Singly Listed options are equitable for the reasons specified below.

Customers currently pay: (i) No transaction fee for equity options; (ii) a $.44 per contract fee for sector index options; and (iii) a $.44 per contract fee for U.S. Dollar-Settled foreign currency options. The Exchange is proposing to assess a $.35 per contract fee to Customers trading Singly Listed options which includes Currencies, equities, ETFs, Indexes and HOLDRS. Customers transacting Multiply Listed equity options, ETFs or HOLDRS are currently assessed no transaction fee and this would not change with this proposal. Customers who currently transact Singly Listed equity options, ETFs or HOLDRS would now pay $.35 per contract.[18] The Exchange believes that this fee increase is equitable because the Exchange incurs a higher operational cost on Singly Listed options as compared to Multiply Listed options as described above. The Exchange believes that it is equitable to assess Customers $.35 per contract to transact Currencies and indexes, because today Customers pay $.44 per contract to transact these products. Customers would benefit from the lower fee. The Exchange is able to lower the fee by offsetting the costs with the fee increase to Customers who transact Singly Listed equity options, ETFs and HOLDRS.

The Exchange believes that it is equitable to assess Specialists,[19] Registered Options Traders,[20] SQTs,[21] and RSQTs[22] a transaction fee of $.35 per contract to transact Singly Listed Currencies, equities, ETFs, indexes and HOLDRS. Market makers[23] today are assessed Equity Options Fees for transacting equity options, ETFs or HOLDRS ranging from $.10–$.25 per contract depending on whether the transaction is electronic[24] or non-electronic, a Penny Pilot[25] or a non-Penny Pilot option or an option overlying RUT, RMN, MNX, NDX or BKX.[26] The Exchange believes that it is equitable to assess market makers $.35 per contract for transacting Singly Listed equities, ETFs and HOLDRs pursuant to the proposed fees in Section III, because such orders would not be subject to payment for order flow. Currently, equity option transactions, including options overlying equities, ETFs, HOLDRS, BKX, RUT, RMN, MNX and NDX, are subject to certain payment for order flow fees.[27] The Exchange assesses Payment for Order Flow Fees of $.25 per contract for options trading in the Penny Pilot Program and $.70 per

[14] The proposed fees in Section III would apply to Singly Listed options.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed option as compared to a Singly Listed option, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

[18] This excludes equity options which are subject to Section I of the Fee Schedule titled "Fees and Rebates for Adding and Removing Liquidity in Select Symbols."

[19] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[20] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[21] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[22] A RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[23] The Exchange market maker category includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[24] Electronically delivered orders do not include orders delivered through the Floor Broker Management System.

[25] The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (adding seventy-five options classes to the Penny Pilot). *See also* Exchange Rule 1034.

[26] This excludes the symbols which are subject to Section I of the Fee Schedule, titled "Fees and Rebates for Adding and Removing Liquidity in Select Symbols."

[27] This excludes the symbols which are subject to Section I of the Fee Schedule, titled "Fees and Rebates for Adding and Removing Liquidity in Select Symbols."

contract for all other equity options.[28] The Exchange believes that it is equitable to assess market makers a higher rate for transacting Singly Listed equities, ETFs or HOLDRS because market makers would not be subject to Payment for Order Fees, as they are today and would continue to be under this proposal, when transacting Multiply Listed equities, ETFs or HOLDRS. The Exchange believes that increasing the fee assessed for indexes and Currencies from $.30 to $.35 per contract is equitable because as stated previously, the Exchange is seeking to recoup costs with respect to Singly Listed products. Additionally, the Exchange would be assessing the same fee on indexes and Currencies.

The Exchange believes that it is equitable to assess Professionals, Firms and Broker-Dealers $.45 per contract to transact Singly Listed options including Currencies, equities, ETFs, indexes and HOLDRS. Currently, Professionals pay $.20 per contract to transact equities, ETFs and HOLDRS, $.35 per contract to transact indexes and $.30 per contract to transact Currencies. The Exchange believes that the proposed $.45 per contract Professional fee would be equitable because of the increased costs associated with Singly Listed options as explained above.

Broker-Dealers today are assessed Equity Options Fees for transacting equity options, ETFs or HOLDRS ranging from $.10–$.45 per contract depending on whether the transaction is electronic or non-electronic, a Penny Pilot or non-Penny Pilot option or an option overlying RUT, RMN, MNX, NDX or BKX. The Exchange believes that the proposed Broker-Dealer fee of $.45 per contract is equitable because it is similar to the Exchange's fees for electronic transactions in Penny Pilot and non-Penny Pilot options.[29] Additionally, the Exchange believes that the proposed fee for both indexes and Currencies is equitable because the rates would remain the same as today.

Finally, Firms today are assessed fees for transacting equities, ETFs and HOLDRS which range from $.10–$.25 per contract. The Exchange believes that the proposed Firm fee of $.45 per contract is equitable because of the higher costs associated with Singly Listed options as compared to Multiply Listed options as explained above. The Exchange believes that the increased costs also form an equitable basis to increase both the Broker-Dealer fees to transact indexes and Currencies from $.30 to $.45 per contract.

The Exchange believes that the proposed fees are reasonable because the fees are consistent with price differentiation that exists today at all option exchanges. Other exchanges today charge different rates as between Multiply Listed products and Singly Listed products. For example, the Internal Securities Exchange, LLC ("ISE") assesses different fees for Customers who transact Multiply Listed options, indexes, ETFs and FX Options ($.00) as compared to Customers who transact Singly Listed indexes, ETFs and FX Options ($.18).[30]

The Exchange believes that the Customer rate of $.35 per contract for Singly Listed Currencies, equities, ETFs and HOLDRS is reasonable because it is less than Customer rates assessed by NYSE Arca, Inc. ("NYSE Arca"), where a Customer electronically executing a Penny Pilot option or a foreign currency option is assessed a fee of $.45 per contract.[31] The Exchange believes that the Customer rate of $.35 per contract for Singly Listed indexes is reasonable because it is less than the rate assessed by ISE for SPX [32] of $.44 per contract.[33]

The Exchange believes that the proposed rate of $.45 per contract for Singly Listed Currencies, equities, ETFs, indexes and HOLDRS for Professionals and Firms is reasonable, because the Exchange is proposing to assess Firms and Professionals the same rate assessed on Broker-Dealers today. NYSE Arca assesses Firms that electronically execute foreign currency options an equity options transaction fee of $.45 plus a royalty fee of $.10 per contract.[34] The Exchange believes it is reasonable to assess a Professional a per contract fee of $.45 per contract for transacting Singly Listed Currencies because the Exchange is assessing all market participants, except Customers and market makers, the same rate to transact Singly Listed Currencies. The Exchange believes that the price differentiation between market makers as compared to Firms, Broker-Dealers and Specialists is justified because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.[35] The Exchange believes that assessing Customers a lower rate to transact Singly Listed indexes is reasonable because all market participants benefit from Customer order flow.

The Exchange believes that its proposed rate of $.45 per contract for Singly Listed indexes is reasonable because the Chicago Board Options Exchange, Incorporated ("CBOE") assesses a Firm and a Professional $.40 per contract for trading SPX.[36] The Exchange believes that assessing Firms and Professionals $.45 per contract in Singly Listed equities, ETFs and HOLDRs is reasonable because NYSE Arca assesses Firms and Broker-Dealers $.50 per contract for equities, ETFs and HOLDRs that are not in the Penny Pilot.[37] The Exchange is not amending the rates it assesses Broker-Dealers for Singly Listed indexes and equities. The rate for Singly Listed equities, ETFs and HOLDRs is the same rate the Exchange assesses Broker-Dealers transacting electronic Penny Pilot and non-Penny Pilot orders today.[38] The Exchange believes that assessing Customers a lower rate to transact Singly Listed indexes is reasonable because it would increase Customer order flow to the Exchange and such increased liquidity would benefit all market participants.

Finally, the Exchange believes that assessing market makers a fee of $.35 per contract for Singly Listed Currencies is reasonable because it is lower than the fee of $.45 plus a royalty fee of $.10 per contract that NYSE Arca assesses market makers that electronically execute foreign currency options.[39] The Exchange is not amending the fees assessed on market makers transacting Singly Listed indexes. The Exchange believes that it is reasonable to assess market makers a $.35 per contract fee for equities, ETFs and HOLDRs because NYSE Arca assesses market makers $.45 per contract to electronically execute Penny Pilot options.[40]

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.

[28] There are no Payment for Order Flow Fees on trades that are not delivered electronically.

[29] *See* Section II of the Exchange's Fee Schedule.

[30] *See* ISE's Schedule of Fees.

[31] *See* NYSE Arca's Fee Schedule.

[32] SPX refers to options on the Standard & Poor's 500 Index.

[33] *See* ISE's Schedule of Fees.

[34] *See* NYSE Arca's Fee Schedule.

[35] *See* Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[36] *See* CBOE's Fees Schedule. CBOE also assesses a surcharge fee of $0.10 for SPX which applies to all non-public customer transactions, including voluntary professionals, and professionals.

[37] *See* NYSE Arca's Fee Schedule. Presumably, this includes options only listed on NYSE Arca.

[38] *See* Section II of the Exchange's Fee Schedule.

[39] *See* NYSE Arca's Fee Schedule.

[40] *See* NYSE Arca's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[41] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2011–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2011–34, and should be submitted on or before April 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6908 Filed 3–23–11; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64097; File No. SR–BX–2010–079]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Amend Chapter IV of the BOX Rules To Allow Executing Participants To Provide BOX a List of the Order Flow Providers for Which the Executing Participants Will Provide Directed Order Services

March 18, 2011.

I. Introduction

On December 3, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposal to amend the rules governing its Directed Order process to: (i) Allow an Executing Participant ("EP") to provide BOX a list of the Order Flow Providers ("OFPs") for which the EP will provide Directed Order services and (ii) provide that BOX would reveal to the EP the participant ID of the OFP sending the Directed Order.[3] The proposed rule change was published for comment in the **Federal Register** on December 20, 2010.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

Under the BOX's Directed Order process, Market Makers on BOX are able to handle orders on an agency basis directed to them by OFPs. An OFP sends a Directed Order to BOX with a designation of the Market Maker to whom the order is to be directed. BOX then routes the Directed Order to the appropriate Market Maker. Under Chapter VI, Section 5(c)(ii) of the BOX Rules, a Market Maker only has two choices when receiving a Directed Order: (1) Submit the order to the Price Improvement Period auction process ("PIP"); [5] or (2) send the order back to BOX for placement onto the BOX Book.

A Market Maker who desires to accept Directed Orders must systemically indicate that it is an EP whenever the Market Maker wishes to receive Directed Orders from the BOX Trading Host. If a Market Maker does not systemically indicate that it is an EP, then the BOX Trading Host will not forward any Directed Orders to that Market Maker. In such a case, the BOX Trading Host will send the order directly to the BOX Book. If a Market Maker has systemically indicated that it wishes to receive Directed Orders, it shall not, under any circumstances, reject the receipt of a Directed Order from the BOX Trading Host nor reject the Directed Order back to the OFP who sent it.[6]

The Exchange proposes to amend Chapter VI, Section 5(c)(i) of the BOX Rules to allow EPs to provide BOX a list of OFPs for which the EP will provide Directed Order services. Under the proposal, prior to accepting any Directed Order through the Trading Host, an EP must inform BOX of the OFPs from whom it has agreed to accept Directed Orders ("Listed OFPs" or "LOFPs"). The Trading Host will then only send to the EP Directed Orders from LOFPs. Further, under the proposal, the BOX Trading Host would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Shortly after the filing of the proposed rule change, the Exchange withdrew an earlier proposal relating to the non-anonymity of Directed Orders (SR–BSE–2005–52). *See* Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR–BSE–2005–52).

[4] *See* Securities Exchange Act Release No. 63539 (December 14, 2010), 75 FR 79429 ("Notice").

[5] *See* Chapter V, Section 18 of the BOX Rules.

[6] *See* Chapter VI, Section 5(c)(i) of the BOX Rules.

reveal to the EP the participant ID of the OFP sending the Directed Order.[7]

III. Discussion

After careful review of the proposal, 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] and, in particular, the requirements of Section 6 of the Act.[9] Specifically, as discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the Federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

Currently under BOX's rules, an Options Participant that is not a Market Maker may provide an opportunity for price improvement to a customer order by submitting it to the PIP. An Options Participant may decide who to accept as its customers and further choose to provide price improvement to some customer orders, but not others, by exercising discretion as to whether it chooses to send a particular order to the PIP auction.[11] An Options Participant would know the identity of its customer in deciding whether to provide this opportunity for price improvement. Market Makers may also provide an opportunity for price improvement to Directed Orders by submitting them into the PIP. The proposed rule change, by permitting a Market Maker to designate those OFPs from which it will accept Directed Orders and to be provided with the identity of the OFP sending a Directed Order, would allow a Market Maker to decide in advance that it will provide an opportunity for price improvement only to orders from certain OFPs.[12] Thus, the proposal will provide information to Market Makers that are EPs that is the same information available to other BOX members when they decide whether to provide price improvement to a particular order.

While customer anonymity may be valuable in ensuring that broker-dealers comply with legal obligations in a variety of circumstances, such as market makers' firm quote obligations, customer anonymity is not required of exchanges, particularly when disclosure of customer identity could provide benefits to certain customers beyond those required by the Federal securities laws or exchange rules. In particular, market makers may be willing to offer better execution prices to certain customers' orders (*e.g.,* retail customers' orders). The Commission does not believe that it would be inconsistent with the Federal securities laws for the Exchange to provide, under the circumstances set forth in this proposal, the means for its Market Makers to differentiate between customers in providing price improvement or other non-required advantages to certain customers. The Exchange's proposal treats all Market Makers the same and establishes no requirements for which OFPs a Market Maker designates as LOFPs or for which orders a Market Maker chooses to provide an opportunity for price improvement. The Commission does not believe that the absence of Exchange rules specifying which orders a Market Maker may execute at prices better that its public quote is unfairly discriminatory.

The Commission notes that allowing a Market Maker to know the identity of firms sending Directed Orders may provide further incentive to that Market Maker to provide price improvement. A Market Maker that receives a Directed Order would be required to decide whether to send the order to the PIP and guarantee a price equal to or better than the NBBO to such order, or to release the order to the BOX book. The Market Maker's decision about whether to choose to guarantee a particular order at a price equal to or better than the NBBO may be affected by this proposal because it provides Market Makers with information to differentiate between orders from informed traders (*i.e.,* their competitors) and orders from uninformed traders. It is well known in academic literature and industry practice that prices tend to move against market makers after trades with informed traders, often resulting in losses for market makers.[13] Thus, there is a strong economic rationale for market makers not providing informed traders price improvement. Uninformed investors end up bearing the cost of these market maker losses through wider spreads that market makers need to quote to uninformed investors due to informed order flow.[14]

Accordingly, while the Exchange's proposal would permit a BOX Market Maker to discriminate among customers in providing prices better than its quote, the Commission does not believe that this discrimination is inconsistent with Section 6(b)(5) of the Act.

The Commission continues to believe that under the proposal, a Market Maker would maintain the incentive to quote aggressively to gain priority with respect to orders entered on the BOX book. Further, the Commission believes that there is rigorous competition for order flow across options exchanges, such that any widening of quotes on one market is an opportunity for another option

[7] Pursuant to an existing pilot program, Directed Orders are not anonymous. *See e.g.,* Securities Exchange Act Release Nos. 63540 (December 14, 2010), 75 FR 79432 (December 20, 2010) (continuing the practice of non-anonymous Directed Orders, originally established in SR–BSE–2006–14, as a pilot program until December 31, 2010 ("Directed Order Pilot Program")) and 63591 (December 21, 2010), 75 FR 81687 (December 28, 2010) (extending the date of the Directed Order Pilot Program until June 30, 2011). The proposed rule change would make permanent this feature of the Directed Order process.

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] *See also* Rule 723 of the International Securities Exchange, LLC (Price Improvement Mechanism) and Rule 6.74A of the Chicago Board Options Exchange, Incorporated (Automated Improvement Mechanism).

[12] Specialists and other market makers may establish payment for order flow relationships with firms on a discretionary basis. A specialist or market maker may pay varying amounts for order flow received from different firms or different customers within firms. Unlike payment for order flow, which principally benefits intermediaries and, indirectly, their customers through possibly lower fees and better services, customers' orders executed through the PIP auction directly benefit customers with the opportunity for an improved price.

[13] *See* Stoll, H. R., "The supply of dealer services in securities of markets," *Journal of Finance* 33 (1978), at 1133–51; Glosten, L. and P. Milgrom, "Bid ask and transaction prices in a specialist market with heterogeneously informed agents," *Journal of Financial Economics* 14 (1985), at 71–100; and Copeland, T., and D. Galai, "Information effects on the bid-ask spread," *Journal of Finance* 38 (1983), at 1457–69.

[14] *Id.*

market to capture order flow.[15] In fact, the Options Order Protection and Locked/Crossed Market Plan provides protection from one exchange ignoring better quoted prices on another market and will continue to promote quote competition across options exchanges.[16]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with Section 6(b)(5) of the Act.[17]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–BX–2010–079) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6909 Filed 3–23–11; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Robert Battalio, "Third Market Broker-Dealers: Cost Competitors or Cream Skimmers?" *Journal of Finance,* 1997; and Robert Battalio, Robert Jason Greene, and Robert Jennings, "How do Competing Specialists and Preferencing Dealers Affect Market Quality?" *Review of Financial Studies,* 1997.

[16] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7328]

Defense Trade Advisory Group; Notice of Open Meeting

Summary: The Defense Trade Advisory Group (DTAG) will meet in open session from 10 a.m. to 1:30 p.m. on Tuesday, May 3, 2011, in the Dean Acheson Auditorium at the U.S. Department of State, Harry S. Truman Building, Washington, DC. Entry and registration will begin at 9 a.m. Please use the building entrance located at 23rd Street, NW., Washington, DC, between C & D Streets. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study. Agenda topics will be posted on the Directorate of Defense Trade Controls' Web site, at *http://www.pmddtc.state.gov* approximately 2 weeks prior to the meeting. Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Alternate Designated Federal Officer (DFO) by close of business Friday, April 22, 2011. If notified after this date, the Department's Bureau of Diplomatic Security may not be able to complete the necessary processing required to attend the plenary session. A person requesting reasonable accommodation should notify the Alternate DFO by the same date. Each non-member observer or DTAG member that wishes to attend this plenary session should provide: his/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Alternate DFO, Patricia Slygh, via e-mail at *SlyghPC@state.gov.* A RSVP list will be provided to Diplomatic Security. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, passport, U.S. Government ID or other valid photo ID. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or e-mail *SlyghPC@state.gov.*

Dated: March 16, 2011.

Robert S. Kovac,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2011–6982 Filed 3–23–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7381]

In the Matter of the Designation of Miguel de Garikoitz Aspiazu Rubina, Also Known as Miguel de Garikoitz Aspiazu Urbina, Also Known as Txeroki, Also Known as Cherokee, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Miguel de Garikoitz Aspiazu Rubina, also known as Miguel de Garikoitz Aspiazu Urbina, also known as Txeroki, also known as Cherokee, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 22, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–6984 Filed 3–23–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7382]

In the Matter of the Designation of Jose Ignacio Reta de Frutos, Also Known as Joseba Inaki Reta de Frutos, Also Known as Joseba Iñaki Reta Fruit, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order

13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Jose Ignacio Reta de Frutos, also known as Joseba Inaki Reta de Frutos, also known as Joseba Iñaki Reta Fruit, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 22, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–6973 Filed 3–23–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–10]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 13, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0196 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Staples (202) 267–4058, Keira Jones (202) 267–4025, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 21, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0196.

Petitioner: Florida West International Airways, Inc.

Section of 14 CFR Affected: 14 CFR 121.689(a)(6).

Description of Relief Sought: Florida West International Airways, Inc. (FWIA) is requesting relief from the requirement to provide minimum fuel supply on flight release forms in pounds or gallons. The exemption will enable FWIA to state the minimum fuel supply in the unit of measurement that is consistent with the aircraft fuel system and the company's weight and balance system.

[FR Doc. 2011–6958 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Statute of Limitation on Claims.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, USACOE, and USFWS, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 79 (SR 79) between Thompson Road and Domenigoni Parkway (post mile [PM] R8.4 to PM R15.8). The project is located north of the City of Murrieta, in unincorporated southwestern Riverside County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*) (1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 20, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: James Shankel, Senior Environmental Planner, Environmental Studies "C" Branch Chief, California Department of Transportation, District 8, Division of Environmental Planning, 464 West 4th Street, 6th Floor MS–827, San Bernardino, California 92401–1400, available 8 a.m.–5 p.m. Monday through Friday, phone number (909) 383–6379 or e-mail: *james_shankel@dot.ca.gov.* For USACOE: Veronica Chan, Project Manager, Regulatory Division, 915 Wilshire Blvd., Los Angeles, CA 90017–3401, phone number (213) 452–3410. For USFWS: Felicia Sirchia, 6010 Hidden Valley Road, Ste. 101, Carlsbad, CA 92011, phone number (760) 431–9440.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, USACOE, and USFWS have taken final agency actions subject to 23 U.S.C. 139(*l*) (1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Widen SR 79 from Thompson Road to Domenigoni Parkway. The general purpose of the project is to facilitate improved operations by increasing capacity, reducing congestion and enhancing safety. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved via issuance of a Finding of No Significant Impact (FONSI) on December 28, 2010, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act of 1970 [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544], Fish and Wildlife Coordination Act [16 U.S.C. 661–667 (d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Antiquities Act of 1906 [16 U.S.C. 431–433].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

6. *Wetlands and Water Resources:* Clean Water Act, [33 U.S.C. 1251–1377].

7. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(j)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; 13112 Invasive Species; E.O. 13007 Indian Sacred Sites; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*) (1).

Issued on: March 16, 2011.

Maiser Khaled,

Acting Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–6745 Filed 3–23–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35456]

Austin Western Railroad, L.L.C.—Lease and Operation Exemption—Capital Metropolitan Transportation Authority

Austin Western Railroad, L.L.C. (AWRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 165.93 miles of rail lines owned by Capital Metropolitan Transportation Authority (CMTA). The lines are located (1) between milepost -1.13, at or near Giddings, Tex., and milepost 154.1, near Llano, Tex.; and (2) between milepost 0.0, near Fairland, Tex., and milepost 6.5, near Marble Falls, Tex. AWRR will also lease and operate over the Scobee Spur (3.3 miles) and the Burnett Spur (0.93 miles). Except for the 1.13-mile segment between milepost -1.13 and milepost 0.0, which has been out of service, AWRR has been the exclusive freight operator over the lines to be leased since 2007, pursuant to an operating agreement. *See Austin W. R.R.—Operation Exemption—Capital Metro. Transp. Auth.,* FD 35072 (STB served Sept. 14, 2007).

AWRR has certified that its projected annual revenues as a result of this transaction will not result in AWRR becoming a Class II or Class I rail carrier but that its projected annual revenue will exceed $5 million. Accordingly, AWRR is required, at least 60 days before an exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

On March 8, 2011, AWRR certified to the Board that, on March 4, 2011, it posted notice of the transaction at the workplace of the employees on the affected lines, and on March 7, 2011, it served a copy of the notice on the national office of the potentially affected employees' labor union, as required under 49 CFR 1150.42(e), as well as on the union's local office. However, concurrently with its notice of exemption, AWRR filed a petition for waiver of the 60-day advance labor notice requirement under § 1150.42(e), asserting that, because AWRR has been the freight operator over the involved lines, the transaction will not result in any operational or maintenance changes on the lines. AWRR's waiver request will be handled in a separate decision.

AWRR states that it intends to consummate the transaction on the effective date of this exemption. The Board will establish in the decision on the waiver request the earliest this transaction may be consummated.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than March 31, 2011.

An original and 10 copies of all pleadings, referring to Docket No. FD 35456, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available at our Web site at *http://www.stb.dot.gov.*

Decided: March 21, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–6986 Filed 3–23–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) for the position of the member specially qualified to serve on the CCAC *by virtue of his or her education, training, or experience in numismatics.* The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the U.S. House of Representatives and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately eight to ten times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: April 8, 2011.

Receipt of Applications: Any member of the public wishing to be considered for the position on the CCAC as the member specially qualified by virtue of education, training or experience in numismatics should submit a resume and cover letter, describing qualifications for membership, by fax to 202–756–6525, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, *Attn:* Greg Weinman. Submissions must be postmarked no later than April 8, 2011.

Notice Concerning Delivery of First-Class and Priority Mail

The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

FOR FURTHER INFORMATION CONTACT: Greg Weinman, Legal Counsel and Acting United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7407.

Dated: March 18, 2011.

Richard Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–6962 Filed 3–23–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will be held April 27–29, 2011, at the Hyatt Regency Cincinnati, 151 West Fifth Street, Cincinnati, Ohio. On April 27, the meeting will begin at 8 a.m. and end at 12 noon. On April 28–29, the meeting will begin at 8:30 a.m. and end at 4 p.m. The meeting is open to the public.

The Committee, comprised of sixty national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The primary purposes of this meeting are to provide for Committee review of volunteer policies and procedures; to accommodate full and open communications between organization representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, place, motivate, and recognize volunteers; and to approve Committee recommendations.

The April 27 session will include a National Executive Committee Meeting, Health Fair, VAVS Representative and Deputy training, and the opening awards dinner (requires prepayment) featuring the keynote address, recognition of the recipients of the American Spirit Awards, VAVS Award for Excellence, and the NAC Volunteer of the Year Awards.

The April 28 business session will include remarks from local officials, the Voluntary Service Report, Veterans Health Administration update, and remarks by VA officials on post-traumatic stress disorder, social media, caregivers support, and women Veterans issues. Educational workshops will be held in the afternoon and focus on mechanics of social media, women's health, hospice and family volunteering.

On April 29, the educational workshops will be repeated in the morning and the business session will be held in the afternoon and will include subcommittee reports, remarks by VA officials on the Veterans Benefits Administration, the homeless program, a presentation on voluntary service best practices, concierge service, an inspirational presentation entitled "Affirming the Commitment," and closing remarks from the Chairman. The James H. Parke Memorial Scholarship recipient will be honored at the Parke Awards dinner (requires prepayment) to be held at 6 p.m.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to Ms. Laura B. Balun, Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 461–7300.

By direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–6985 Filed 3–23–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Demand Response Compensation in Organized Wholesale Energy Markets; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–17–000; Order No. 745]

Demand Response Compensation in Organized Wholesale Energy Markets

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) amends its regulations under the Federal Power Act to ensure that when a demand response resource participating in an organized wholesale energy market administered by a Regional Transmission Organization (RTO) or Independent System Operator (ISO) has the capability to balance supply and demand as an alternative to a generation resource and when dispatch of that demand response resource is cost-effective as determined by the net benefits test described in this rule, that demand response resource must be compensated for the service it provides to the energy market at the market price for energy, referred to as the locational marginal price (LMP). This approach for compensating demand response resources helps to ensure the competitiveness of organized wholesale energy markets and remove barriers to the participation of demand response resources, thus ensuring just and reasonable wholesale rates.

DATES: *Effective Date:* This Final Rule will become effective on April 25, 2011. Dates for compliance and other required filings are provided in the Final Rule.

FOR FURTHER INFORMATION CONTACT:

David Hunger (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8148, *david.hunger@ferc.gov;*

Dennis Hough (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8631, *dennis.hough@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

(Issued March 15, 2011)

	Paragraph Nos.
I. Introduction	*1*
II. Background	*8*
III. Procedural History	*15*
IV. Discussion	*17*
A. Compensation Level	*18*
1. NOPR Proposal	*18*
2. Comments	*20*
(a) Capability of Demand Response and Generation Resources to Balance Energy Markets	*20*
(b) Appropriateness of a Net Benefits Test	*38*
(c) Standardization or Regional Variations in Compensation	*43*
3. Commission Determination	*45*
B. Implementation of a Net Benefits Test	*68*
1. Comments	*68*
2. Commission Determination	*78*
C. Measurement and Verification	*86*
1. NOPR Proposal	*86*
2. Comments	*88*
3. Commission Determination	*93*
D. Cost Allocation	*96*
1. NOPR Proposal	*96*
2. Comments	*97*
3. Commission Determination	*99*
E. Commission Jurisdiction	*103*
1. Comments	*103*
2. Commission Determination	*112*
V. Information Collection Statement	*116*
VI. Environmental Analysis	*121*
VII. Regulatory Flexibility Act	*122*
VIII. Document Availability	*130*
IX. Effective Date and Congressional Notification	*133*
Regulatory Text	
Appendix 1—List of Commenters	
Appendix 2—Dissenting Statement	

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

I. Introduction

1. This Final Rule addresses compensation for demand response in Regional Transmission Organization (RTO) and Independent System Operator (ISO) organized wholesale energy markets, *i.e.,* the day-ahead and real-time energy markets. As the Commission has previously recognized, a market functions effectively only when both supply and demand can meaningfully participate. The Commission, in the Notice of Proposed Rulemaking (NOPR) issued in this proceeding on March 18, 2010, proposed a remedy to concerns that current compensation levels inhibited meaningful demand-side participation.[1] After nearly 3,800 pages of comments, a subsequent technical conference, and the opportunity for additional comment, we now take final action.

[1] *Demand Response Compensation in Organized Wholesale Energy Markets,* Notice of Proposed Rulemaking, 75 FR 15362 (Mar. 29, 2010), FERC Stats. & Regs. ¶ 32,656 (2010) (NOPR).

2. We conclude that when a demand response[2] resource[3] participating in an organized wholesale energy market[4] administered by an RTO or ISO has the capability to balance supply and demand as an alternative to a generation resource and when dispatch of that demand response resource is cost-effective as determined by the net benefits test described herein, that demand response resource must be compensated for the service it provides to the energy market at the market price for energy, referred to as the locational marginal price (LMP).[5] The Commission finds that this approach to compensation for demand response resources is necessary to ensure that rates are just and reasonable in the organized wholesale energy markets. Consistent with this finding, this Final Rule adds section 35.28(g)(1)(v) to the Commission's regulations to establish a specific compensation approach for demand response resources participating in the organized wholesale energy markets administered by RTOs and ISOs. The Commission is not requiring the use of this compensation approach when demand response resources do not satisfy the capability and cost-effectiveness conditions noted above.[6]

3. This cost-effectiveness condition, as determined by the net benefits test described herein, recognizes that, depending on the change in LMP relative to the size of the energy market, dispatching demand response resources may result in an increased cost per unit ($/MWh) to the remaining wholesale load associated with the decreased amount of load paying the bill. This is the case because customers are billed for energy based on the units, MWh, of electricity consumed. We refer to this potential result as the billing unit effect of dispatching demand response. By contrast, dispatching generation resources does not produce this billing unit effect because it does not result in a decrease of load. To address this billing unit effect, the Commission in this Final Rule requires the use of the net benefits test described herein to ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the cost of dispatching and paying LMP to those resources. When the net benefits test described herein is satisfied and the demand response resource clears in the RTO's or ISO's economic dispatch, the demand response resource is a cost-effective alternative to generation resources for balancing supply and demand.

4. To implement the net benefits test described herein, we direct each RTO and ISO to develop a mechanism as an approximation to determine a price level at which the dispatch of demand response resources will be cost-effective. The RTO or ISO should determine, based on historical data as a starting point and updated for changes in relevant supply conditions such as changes in fuel prices and generator unit availability, the monthly threshold price corresponding to the point along the supply stack beyond which the overall benefit from the reduced LMP resulting from dispatching demand response resources exceeds the cost of dispatching and paying LMP to those resources. This price level is to be updated monthly, by each ISO or RTO, as the historic data and relevant supply conditions change.[7]

5. This Final Rule also sets forth a method for allocating the costs of demand response payments among all customers who benefit from the lower LMP resulting from the demand response.

6. The tariff changes needed to implement the compensation approach required in this Final Rule, including the net benefits test, measurement and verification explanation and proposed changes, and the cost allocation mechanism must be made on or before July 22, 2011. All tariff changes directed herein should be submitted as compliance filings pursuant to this Final Rule, not pursuant to section 205 of the Federal Power Act (FPA).[8] Accordingly, each RTO's or ISO's compliance filing to this Final Rule will become effective prospectively from the date of the Commission order addressing that filing, and not within 60 days of submission.

7. In addition, we believe that integrating a determination of the cost-effectiveness of demand response resources into the dispatch of the ISOs and RTOs may be more precise than the monthly price threshold and, therefore, provide the greatest opportunity for load to benefit from participation of demand response in the organized wholesale energy market administered by an RTO or ISO. However, we acknowledge the position of several of the RTOs and ISOs that modification of their dispatch algorithms to incorporate the costs related to demand response may be difficult in the near term. In light of those concerns, we require each RTO and ISO to undertake a study examining the requirements for and impacts of implementing a dynamic approach which incorporates the billing unit effect in the dispatch algorithm to determine when paying demand response resources the LMP results in net benefits to customers in both the day-ahead and real-time energy markets. The Commission directs each RTO and ISO to file the results of this study with the Commission on or before September 21, 2012.[9]

II. Background

8. Effective wholesale competition protects customers by, among other things, providing more supply options, encouraging new entry and innovation, and spurring deployment of new technologies.[10] Improving the competitiveness of organized wholesale energy markets is therefore integral to the Commission fulfilling its statutory mandate under the FPA to ensure

[2] Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2010).

[3] Demand response resource means a resource capable of providing demand response. 18 CFR 35.28(b)(5).

[4] The requirements of this final rule apply only to a demand response resource participating in a day-ahead or real-time energy market administered by an RTO or ISO. Thus, this Final Rule does not apply to compensation for demand response under programs that RTOs and ISOs administer for reliability or emergency conditions, such as, for instance, Midwest ISO's Emergency Demand Response, NYISO's Emergency Demand Response Program, and PJM's Emergency Load Response Program. This Final Rule also does not apply to compensation in ancillary services markets, which the Commission has addressed elsewhere. *See, e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719).

[5] LMP refers to the price calculated by the ISO or RTO at particular locations or electrical nodes or zones within the ISO or RTO footprint and is used as the market price to compensate generators. There are variations in the way that RTOs and ISOs calculate LMP; however, each method establishes the marginal value of resources in that market. Nothing in this Final Rule is intended to change RTO and ISO methods for calculating LMP.

[6] The Commission's findings in this Final Rule do not preclude the Commission from determining that other approaches to compensation would be acceptable when these conditions are not met.

[7] In its compliance filing an RTO or ISO may attempt to show, in whole or in part, how its proposed or existing practices are consistent with or superior to the requirements of this Final Rule.

[8] 16 U.S.C. 824d (2006).

[9] We note that this report is for informational purposes only and will neither be noticed nor require Commission action.

[10] *See, e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 1 (2008) (Order No. 719); *see also Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 1 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607, 348 U.S. App. DC 205 (DC Cir. 2001).

supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates.[11]

9. As the Commission recognized in Order No. 719, active participation by customers in the form of demand response in organized wholesale energy markets helps to increase competition in those markets.[12] Demand response, whereby customers reduce electricity consumption from normal usage levels in response to price signals, can generally occur in two ways:
(1) Customers reduce demand by responding to retail rates that are based on wholesale prices (sometimes called "price-responsive demand"); and
(2) customers provide demand response that acts as a resource in organized wholesale energy markets to balance supply and demand. While a number of States and utilities are pursuing retail-level price-responsive demand initiatives based on dynamic and time-differentiated retail prices and utility investments in demand response enabling technologies, these are State efforts, and, thus, are not the subject of this proceeding. Our focus here is on customers or aggregators of retail customers providing, through bids or self-schedules, demand response that acts as a resource in organized wholesale energy markets.

10. As the Commission stated in Order No. 719,[13] and emphasized in the NOPR,[14] there are several ways in which demand response in organized wholesale energy markets can help improve the functioning and competitiveness of those markets. First, when bid directly into the wholesale market, demand response can facilitate RTOs and ISOs in balancing supply and demand, and thereby, help produce just and reasonable energy prices.[15] This is because customers who choose to respond will signal to the RTO or ISO and energy market their willingness to reduce demand on the grid which may result in reduced dispatch of higher-priced resources to satisfy load.[16] Second, demand response can mitigate generator market power.[17] This is because the more demand response that sees and responds to higher market prices, the greater the competition, and the more downward pressure it places on generator bidding strategies by increasing the risk to a supplier that it will not be dispatched if it bids a price that is too high.[18] Third, demand response has the potential to support system reliability and address resource adequacy [19] and resource management challenges surrounding the unexpected loss of generation. This is because demand response resources can provide quick balancing of the electricity grid.[20]

11. Congress has recognized the importance of demand response by enacting national policy requiring its facilitation.[21] Consistent with that policy, the Commission has undertaken several reforms to support competitive wholesale energy markets by removing barriers to participation of demand response resources. For example, in Order No. 890, the Commission modified the *pro forma* Open Access Transmission Tariff to allow non-generation resources, including demand response resources, to be used in the provision of certain ancillary services where appropriate on a comparable basis to service provided by generation resources.[22] Order No. 890–A further required transmission providers to develop transmission planning processes that treat all resources, including demand response, on a comparable basis.[23]

12. In Order No. 719, the Commission required RTOs and ISOs to, among other things, accept bids from demand response resources in their markets for certain ancillary services on a basis comparable to other resources.[24] The Commission also required each RTO and ISO "to reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage,"[25] for purposes of encouraging existing generation and demand resources to continue to be relied upon during an operating reserve shortage, and encouraging entry of new generation and demand resources.[26]

13. Additionally, in recent years several RTOs and ISOs have instituted various types of demand response programs. While some of these programs are administered for reliability and emergency conditions, other programs allow wholesale customers, qualifying large retail customers, and aggregators of retail customers to participate directly in the day-ahead and real-time energy markets, certain ancillary service markets and capacity markets.[27]

[11] 16 U.S.C. 824d (2006); Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

[12] *See* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 48.

[13] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292, at P 48 (2009).

[14] NOPR, FERC Stats. & Regs. ¶ 32,656 at P 4.

[15] For example, a study conducted by PJM, which simulated the effect of demand response on prices, demonstrated that a modest three percent load reduction in the 100 highest peak hours corresponds to a price decline of six to 12 percent. ISO–RTO Council Report, Harnessing the Power of Demand How RTOs and ISOs Are Integrating Demand Response into Wholesale Electricity Markets, found at *http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf.*

[16] *Id.* ("Demand response tends to flatten an area's load profile, which in turn may reduce the need to construct and use more costly resources during periods of high demand; the overall effect is to lower the average cost of producing energy.").

[17] *See* Comments of NYISO's Independent Market Monitor filed in Docket No. ER09–1142–000, May 15, 2009 (Demand response "contributes to reliability in the short-term, resource adequacy in the long-term, reduces price volatility and other market costs, and mitigates supplier market power.").

[18] *Id.*

[19] *See* ISO–RTO Council Report, Harnessing the Power of Demand How RTOs and ISOs Are Integrating Demand Response into Wholesale Electricity Markets at 4, found at *http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf* ("Demand response contributes to maintaining system reliability. Lower electric load when supply is especially tight reduces the likelihood of load shedding. Improvements in reliability mean that many circumstances that otherwise result in forced outages and rolling blackouts are averted, resulting in substantial financial savings * * *.").

[20] For instance, in ERCOT, on February 26, 2008, through a combination of a sudden loss of thermal generation, drop in power supplied by wind generators, and a quicker-than-expected ramping up of demand, ERCOT found itself short of reserves. The system operator called on all demand response resources, and 1200 MW of Load acting as Resource (LaaRs) responded quickly, bringing ERCOT back into balance. Oak Ridge Nat'l Lab., Nat'l Renewable Energy Lab., Tech. Rep. NREL/TP–500–43373, ERCOT Event on Feb. 26, 2008: Lessons Learned (Jul. 2008).

[21] *See* Energy Policy Act of 2005, Public Law 109–58, § 1252(f), 119 Stat. 594, 965 (2005) ("It is the policy of the United States that * * * unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.").

[22] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 887–88 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[23] Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 216.

[24] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47–49.

[25] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 194.

[26] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 247.

[27] Other demand response programs allow demand response to be used as a capacity resource and as a resource during system emergencies or permit the use of demand response for synchronized reserves and regulation service. *See, e.g., PJM Interconnection, L.L.C.,* 117 FERC ¶ 61,331 (2006); *Devon Power LLC,* 115 FERC ¶ 61,340, *order on reh'g,* 117 FERC ¶ 61,133 (2006), *appeal pending sub nom. Maine Pub. Utils. Comm'n* v. *FERC,* No. 06–1403 (D.C. Cir. 2007); *New York Indep. Sys. Operator, Inc.,* 95 FERC ¶ 61,136 (2001); *NSTAR Services Co.* v. *New England Power Pool,* 95 FERC ¶ 61,250 (2001); *New England Power Pool and ISO New England, Inc.,* 100 FERC ¶ 61,287, *order on reh'g,* 101 FERC ¶ 61,344 (2002), *order on reh'g,* 103 FERC ¶ 61,304, *order on reh'g,* 105 FERC ¶ 61,211 (2003); *PJM Interconnection, L.L.C.,* 99 FERC

14. To date, the Commission has allowed each RTO and ISO to develop its own compensation methodologies for demand response resources participating in its day-ahead and real-time energy markets. As a result, the levels of compensation for demand response vary significantly among RTOs and ISOs.[28] For example, PJM Interconnection, L.L.C. (PJM) pays the LMP minus the generation and transmission portions of the retail rate.[29] ISO New England Inc. (ISO–NE) and New York Independent System Operator, Inc. (NYISO) pay LMP when prices exceed a threshold level, with the levels differing between the RTOs.[30] The Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) demand response programs [31] pay LMP for demand response resources in the day-ahead and real-time energy markets.[32] The California Independent System Operator Corporation (CAISO) pays LMP at pricing nodes, or sub-load aggregation points (Sub-LAP) in its Proxy Demand Resource program that allows qualifying resources to provide day-ahead and real-time energy.[33] CAISO also provides for demand response resources to participate in its Participating Load program, which enables certain resources to provide curtailable demand in the CAISO market. CAISO pays nodal real-time LMP for its Participating Load program. The Southwest Power Pool, Inc. (SPP) has filed revisions to its tariff to facilitate demand response in the Energy Imbalance Service Market.[34]

III. Procedural History

15. As noted above, the Commission issued the NOPR in this proceeding on March 18, 2010.[35] The NOPR proposed to require RTOs and ISOs to pay the LMP in all hours for demand reductions made in response to price signals. The Commission sought comments on the compensation proposal and, in particular, on the comparability of generation and demand response resources; alternative approaches to compensating demand response in organized wholesale energy markets; whether payment of LMP should apply in all hours, and, if not, any criteria that should be used for establishing hours when LMP should apply; and whether to allow for regional variations concerning approaches to demand response compensation.[36]

16. After receiving the first round of comments, the Commission issued a Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference (Supplemental NOPR) in this proceeding on August 2, 2010.[37] The Supplemental NOPR sought additional comment on: Whether the Commission should adopt a net benefits test for determining when to compensate demand response providers, and, if so, what, if any, requirements should apply to the methods for determining net benefits; and what, if any, requirements should apply to how the costs of demand response are allocated. The Commission further directed Staff to hold a technical conference focused on these two issues, which occurred on September 13, 2010.[38]

IV. Discussion

17. Based upon the record in this proceeding, the Commission herein requires greater uniformity in compensating demand response resources participating in organized wholesale energy markets. This Final Rule also addresses the allocation of costs resulting from the commitment of demand response, directing that such costs be allocated among those customers who benefit from the lower LMP resulting from the demand response.

A. Compensation Level

1. NOPR Proposal

18. The NOPR proposed to require RTOs and ISOs to pay the LMP in all hours for demand reductions made in response to price signals. The NOPR sought to provide comparable compensation to generation and demand response providers, based on the premise that both resources provide a comparable service to RTOs and ISOs for purposes of balancing supply and demand and maintaining a reliable electricity grid.[39] Also as stated in the NOPR, the proposed compensation level was designed to allow more demand response resources to cover their investment costs in demand response-related technology (such as advanced metering) and thereby facilitate their ability to participate in organized wholesale energy markets.[40] The Commission sought comments on the compensation proposal and, in particular, on the comparability of generation and demand response resources; alternative approaches to compensating demand response in organized wholesale energy markets; whether payment of LMP should apply in all hours, and, if not, any criteria that should be used for establishing hours when LMP should apply; and whether to allow for regional variations concerning approaches to demand response compensation.

19. In the Supplemental NOPR, the Commission sought additional comments and directed staff to hold a technical conference regarding various net benefits tests. In particular, the Commission sought comment on:

¶ 61,227 (2002); *California Independent System Operator Corp.,* 132 FERC ¶ 61,045 (2010).

[28] *See New England, Inc.,* Docket No. ER09–1051–000; *ISO New England, Inc.,* Docket No. ER08–830–000; *Midwest Indep. Transmission Sys. Operator, Inc.,* Docket No. ER09–1049–000.

[29] *See* sections 3.3A.4 and 3.3A.5 (Market Settlements in the Real-Time and Day-Ahead Energy Markets) of the Appendix to Attachment K of the PJM Tariff.

[30] For example, under ISO–NE's Real-Time Price Response Program, the minimum bid is $100/MWh and a demand response resource is paid the higher of LMP or $100/MWh. For the Day-Ahead Load Response Program, the minimum offer level is calculated on a monthly basis and is the Forward Reserve Fuel Index ($/MMBtu) multiplied by an effective heat rate of 11.37 MMBtu/MWh. The maximum offer level is $1,000/MWh. *See* sections III.E.2.1 and III.E.3.2 of Appendix E of the ISO New England Transmission, Markets and Services Tariff. NYISO implements a day-ahead demand response program by which resources bid into the market at a minimum of $75/MWh and can get paid the LMP. *See* section 4.2.2.9 ("Day-Ahead Bids from Demand Reduction Providers to Supply Energy from Demand Reductions") of NYISO's Market Services Tariff.

[31] Midwest ISO FERC Electric Tariff characterizes Demand Response Resources (DRR) as either DRR-Type I or DRR-Type II. DRR-Type I are capable of supplying a specific quantity of energy or contingency reserve through physical load interruption. DRR-Type II are capable of supplying energy and/or operating reserves over a dispatchable range. *See* sections 39.2.5A and 40.2.5 of the Tariff.

[32] *See* Charges and Payments for Purchases and Sales for Demand Response Resources. Midwest ISO FERC Electric Tariff, section 39.3.2C.

[33] *See* section 11.2.1.1 IFM Payments for Supply of Energy, CAISO FERC Electric Tariff. CAISO notes that for a Proxy Demand Resource that is made up of aggregated loads, the Resource is paid the weighted average of the LMPs of each pricing node where the underlying aggregate loads reside. *See CAISO,* 132 FERC ¶ 61,045, at P 26 n.14 (2010).

[34] The Commission has directed SPP to report on ways it can incorporate demand response into its imbalance market. *Southwest Power Pool, Inc.,* 128 FERC ¶ 61,085 (2009). As of September 1, 2010, SPP has submitted seven informational status reports regarding its efforts to address issues related to demand response resources. In orders addressing SPP's compliance with Order No. 719, the Commission also directed SPP to make another compliance filing addressing demand response participation in its organized markets. *Southwest Power Pool, Inc.,* 129 FERC ¶ 61,163, at P 51 (2009). On May 19, 2010, SPP submitted revisions to its Open Access Transmission Tariff in Docket Nos. ER09–1050–004 and ER09–748–002 to comply with the Commission's requirements established in Order Nos. 719 and 719–A. These filings are pending before the Commission.

[35] NOPR, FERC Stats. & Regs. ¶ 32,656.

[36] *See* Appendix for a list of commenters.

[37] *Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference,* 75 FR 47499 (Aug. 6, 2010), 132 FERC ¶ 61,094 (2010) (Supplemental NOPR).

[38] *See* Notice of Technical Conference (Aug. 27, 2010).

[39] NOPR, FERC Stats. & Regs. ¶ 32,656 at P 15.

[40] *Id.* at P 16.

whether the Commission should adopt a net benefits test applicable in all or only some hours and what the criteria of any such test would be; how to define net benefits; what costs demand response providers and load serving entities incur and whether they should be included in a net benefits test; whether any net benefits methodology adopted should be the same for all RTOs and ISOs; proposed methodologies for implementing a net benefits test and the advantages and limitations of any proposed methodologies.[41] The September 13, 2010 Technical Conference included an eleven-member panel discussion of net benefits tests representing a wide range of interests and viewpoints.[42] The Commission subsequently received additional written comments addressing these issues.

2. Comments

(a) Capability of Demand Response and Generation Resources To Balance Energy Markets

20. Various commenters address the comparability of demand response and generation resources for purposes of compensation in the organized wholesale energy markets. To begin, numerous commenters address the physical or functional comparability of demand response and generation, agreeing that an increment of generation is comparable to a decrement of load for purposes of balancing supply and demand in the day-ahead and real-time energy markets.[43] Equating generation and demand response resources, Dr. Alfred E. Kahn states:

> [Demand response] is in all essential respects economically equivalent to supply response * * * [so] economic efficiency requires * * * that it should be rewarded with the same LMP that clears the market. Since [demand response] is actually—and not merely metaphorically—equivalent to supply response, economic efficiency requires that it be regarded and rewarded, equivalently, as a resource proffered to system operators, and be treated equivalently to generation in competitive power markets. That is, all resources—energy saved equivalently to energy supplied—* * * should receive the same market-clearing LMP in remuneration.[44]

Indeed, some commenters believe that, from a physical standpoint, demand response can provide superior services to generation, such as providing a quick response in meeting system requirements and service without having to construct major new facilities.[45] Occidental asserts that the fungibility of demand response and generation output creates greater operational flexibility that, in turn, offers RTOs and ISOs multiple options to solve system issues both in energy and ancillary service markets, and that the fungible nature of demand response and generation supports comparable compensation for each as proposed in the NOPR.[46]

21. Viridity states that attempts to distinguish the physical characteristics of generation and demand response ignore bid-based security-constrained economic dispatch as the foundation for LMP and are based on the assumption that the value of load management on the grid is limited to periods when the system is stressed, *i.e.,* traditional "super peak shaving." Viridity states that, while these arguments might have been valid 15 years ago, today competitive markets can offer proactively-managed load control and comparable and non-discriminatory treatment of load-based energy resources. Therefore, Viridity asserts that all resources should be paid LMP if the grid operator accepts their bid to achieve grid balance.[47]

22. At the same time, other commenters argue that generation and demand response are not physically equivalent, pointing out that demand response reduces consumption, whereas generators serve consumption.[48] They argue that a MW reduction in demand does not turn on the lights.[49] EPSA adds that a load reduction does not provide electrons to any other load and, instead, allows the marginal electron to serve a different customer.[50] Some commenters assert that a power system can function solely and reliably on generating plants and without any reliance on demand response, while the system cannot rely exclusively on demand response because demand response by itself cannot keep the lights on. Ultimately, some commenters point out, megawatts produced by generators need to be placed on the system in order for power to flow.[51] Battelle additionally argues that a reduction in consumption is not exactly the same as an increase in production, because elastic demand often comes with attendant future consequences, such as rebound, by virtue of substitution in time.[52]

23. Some commenters who argue that the physical characteristics of demand response are not comparable to generation frame their arguments in terms of the ability of the system operator to call on demand response and generation resources to provide balancing energy. They argue that generation resources provide superior service to demand response providers, positing that demand response is not intended for long periods of balancing needs,[53] and that, moreover, contracts with demand response providers limit the number of hours and times a customer may be called upon to curtail. For example, ODEC asserts that the degree of physical comparability depends on the extent to which demand response resources can be dispatched similar to a generator.[54] Calpine adds that traditional generators provide system support features that demand response cannot, such as ancillary services including governor response or reactive power voltage support, which are necessary for reliable operation of the electric system.[55]

24. Numerous commenters also address the comparability of demand response and generation in economic terms. For example, EEI states that, in finance terms, the demand response product is, unlike generation, essentially an unexercised call option on spot market energy, and the value of that option is well-established in finance theory as the value of the resource (LMP) minus the "strike price," which EEI contends in this case is the retail tariff rate.[56] EEI and like-minded commenters support, therefore, alternative compensation for demand response to equal LMP minus the generation (or G) component of the retail rate.[57] They posit that payment of

[41] Supplemental NOPR, 132 FERC ¶ 61,094 at P 8–9.

[42] *See* Sept. 13, 2010 Tr.

[43] DR Supporters Aug. 30, 2010 Comments (Kahn Affidavit at 2); Verso May 13, 2010 Comments at 3–4; Occidental May 13, 2010 Comments at 11; Viridity June 18, 2010 Comments at 5.

[44] DR Supporters August 30, 2010 Reply Comments (Kahn Affidavit at 2 (footnote omitted)).

[45] Verso May 13, 2010 Comments at 3–4; Alcoa May 13, 2010 Comments at 9.

[46] Occidental May 13, 2010 Comments at 11.

[47] Viridity June 18, 2010 Comments at 5.

[48] ISO–NE May 13, 2010 Comments at 3.

[49] *See, e.g.,* APPA May 13, 2010 Comments at 12; Capital Power May 13, 2010 Comments at 2.

[50] EPSA May 13, 2010 Comments at 72.

[51] *See, e.g.,* PSEG May 13, 2010 Comments at 8.

[52] Battelle May 13, 2010 Comments at 3.

[53] AEP May 13, 2010 Comments at 7–8.

[54] ODEC May 13, 2010 Comments at 12.

[55] Calpine May 13, 2010 Comments at 4–5.

[56] EEI May 13, 2010 Comments at 4–5. *See also* Robert L. Borlick May 13, 2010 Comments at 4. Mr. Borlick argues that the correct price is LMP minus the Marginal Foregone Retail Rate (MFRR), describing the economically efficient price that should be paid to a demand response provider as "its offer price minus the price in its retail tariff at which it would have purchased the curtailed energy." Mr. Borlick asserts that this amount accurately represents the forgone opportunity costs that result when a demand response provider reduces its load. *Id.*

[57] *See* May 13, 2010 Comments of: APPPA; AEP; The Brattle Group; Calpine; ConEd; Consumers Energy; CPG; Detroit Edison; Direct Energy; Dominion; Duke Energy; Edison Mission; EEI; EPSA; Exelon; FTC; GDF; NYISO on behalf of the

LMP without an offset for some portion of the retail rate does not send the proper economic signal to providers of demand response, because it fails to take into account the retail rate savings associated with demand response, and thereby overcompensates the demand response provider. As described by Dr. William W. Hogan on behalf of EPSA, this is sometimes called a double-payment for demand reductions, because demand response providers would "receive" both the cost savings from not consuming an increment of electricity at a particular price, plus an LMP payment for not consuming that same increment of electricity.[58] Viewing LMP as a double-payment, these commenters argue that paying LMP will result in more demand response than is economically efficient.[59] For example, Dr. Hogan states that paying LMP might motivate a company to shut down even though the benefits of consuming electricity outweigh the cost at LMP.[60] Indeed, P3 argues that compensation in excess of LMP–G is unjust and unreasonable, because such a payment level imposes costs on customers that are not commensurate with benefits received.[61]

25. ISO–NE argues that paying full LMP to demand response providers without taking into account the bill savings produced by demand response provides a significant financial incentive to dispatch demand response with marginal costs exceeding LMPs. By dispatching higher-cost demand response, ISO–NE asserts, lower-cost generation resources are displaced.[62] At the same time, ISO–NE argues, generation is not dispatched and paid for only when the generation reduces LMP—generation is dispatched and paid for when it is cost-effective.[63]

26. Dr. Hogan further disputes arguments equating a MW of energy supplied to a MW of energy saved on economic grounds. Dr. Hogan draws a distinction between reselling something that one has purchased, and selling something that one would have purchased without actually purchasing it. Dr. Hogan argues that from the perspective of economic efficiency and welfare maximization, the aggregate effect of demand response is a wash producing no economic net benefit. Dr. Hogan asserts that Commission policy citing the benefits of price reduction in support of demand response compensation would amount to no less than an application of regulatory authority to enforce a buyers' cartel. He states that the Commission has been vigilant and aggressive in preventing buyers and sellers from engaging in market manipulation to influence prices, and it would be fundamentally inconsistent for the Commission to design demand response compensation policies that coordinate and enforce such price manipulation.

27. Dr. Hogan argues that the ideal and economically efficient solution regarding demand response compensation is to implement retail real-time pricing at the LMP, thereby eliminating the need for demand response programs. Realizing that this is unattainable at the present time, Dr. Hogan goes on to propose a next-best solution, which he believes is to pay demand response compensation in the amount of LMP–G, or some amount that simulates explicit contract demand response (such as "buy-the-baseline" approach discussed below). These options, he argues, more than paying LMP, better support notions of comparability between demand response resources and generation.[64]

28. The New York Commission, however, argues that requiring payment of LMP–G would result in an administrative burden of tracking retail rates for the multiple utilities, ESCOs and power authorities and create undue confusion for retail customers and administrative difficulties for State commissions and ISOs and RTOs.[65]

29. Consistent with Dr. Hogan's arguments, some commenters assert that demand response providers should actually own or pay for electricity prior to, what commenters characterize as, an effective reselling of the electricity back to the market in the form of demand response. For example, these commenters suggest that the demand response provider purchase the power in the day-ahead market and resell it in the real-time markets.[66] EPSA argues that there must be some purchase requirement or representative offset to allow a demand response provider to "sell" a commodity that it owns to the ISO or RTO.[67] EPSA argues that such a requirement would send an efficient price signal, reduce incentives for gaming the system, and help address difficulties with measurement and verification of a demand reduction. EPSA highlights an ISO–NE IMM recommendation that, if the Commission permits LMP payment, it should also adopt a "buy-the-baseline" approach requiring demand response resources to purchase an expected amount of energy consumption in the day-ahead energy market and subsequently sell any demand reduction from that level in the real-time market.[68]

30. Viridity, on the other hand, argues that forcing customers to buy and then resell electricity will lead to too little demand response and that adopting a "buy-the-baseline" approach would constitute an inappropriate exercise of Commission authority to effectively force parties into contracts. Viridity and DR Supporters state that any characterization of demand response as a purchase and then resale of energy is erroneous[69] and based on the flawed assumption that demand response resources are reselling energy. They state that the description of demand response as a reselling of energy has been correctly rejected by the Commission in *EnergyConnect,* where the Commission stated that it was establishing a policy of treating demand response as a service rather than a purchase and sale of electric energy.[70]

31. DR Supporters further argues that, despite claims to the contrary, paying full LMP to demand response providers does not constitute a subsidy for demand response any more than the remunerations of generators for the power that they sell. As Dr. Kahn states:

> Does this plan involve double compensation, as [Dr.] Hogan asserts, at the expense of power generators—of successful

ISO RTO Council; ICC; IPPNY; Indicated New York TOs; IPA; ISO–NE; Midwest TDUs; Mirant; Midwest ISO TOs; NEPGA; NYISO; ODEC; OMS; PJM; PJM IMM; P3; Potomac Economics; PG&E; Ohio Commission; Robert L. Borlick; Roy Shanker; and RRI Energy.

[58] *See* Attachment to Answer of EPSA, Providing Incentives for Efficient Demand Response, Dr. William W. Hogan, Oct. 29, 2009, submitted in Docket No. EL09–68–000.

[59] EPSA May 13, 2010 Comments at 23. *See also* May 13, 2010 Comments of APPA at 13; FTC at 9; Midwest TDUs at 14; Mirant at 2; New York Commission at 5; PJM at 6; PSEG at 5; and Potomac Economics at 6–8.

[60] Attachment to Answer of EPSA, Providing Incentives for Efficient Demand Response, Dr. William W. Hogan, Oct. 29, 2009, submitted in Docket No. EL09–68–000. In Dr. Hogan's view, supply should produce when the price of electricity exceeds its cost of production and demand should decline to consume when the costs in terms of convenience of delaying use are less than the price of electricity.

[61] P3 June 14, 2010 Comments at 2, 7–8.

[62] ISO–NE May 13, 2010 Comments at 3–4.

[63] *Id.* at 28.

[64] Hogan Affidavit, ISO RTO Council May 13, 2010 Comments at 5.

[65] New York Commission May 13, 2010 Comments at 8.

[66] *See, e.g.,* ISO–NE IMM May 13, 2010 Comments at 4–5; Midwest ISO TOs May 13, 2010 Comments at 14; PJM May 13, 2010 Comments at 5; and Duke Energy May 13, 2010 Comments at 2.

[67] EPSA June 30, 2010 Comments at 3.

[68] EPSA June 30, 2010 Comments at 23.

[69] Viridity Energy June 18, 2010 Comments at 25.

[70] DR Supporters Aug. 30, 2010 Reply Comments at 10 (citing *EnergyConnect, Inc.,* 130 FERC ¶ 61,031 at P 30–31 (2010)).

bidders promising to induce efficient demand curtailment and of consumers induced to practice it? Certainly not: The decrease in the revenue of the generators is (and consequent savings by consumers are) matched by the savings in their (marginal) costs of generating that power; the successful bidders for the opportunity to induce that consumer response are compensated for the costs of those efforts by the pool, whose (marginal) costs they save by assisting consumers to reduce their purchases.[71]

32. Viridity further disputes Dr. Hogan's argument that payment of LMP for demand response will distort an otherwise optimal market. Viridity posits that such arguments ignore dislocations in the wholesale power markets, the existence of market power that must be mitigated, imperfect information available to customers, barriers to entry and uneconomic resources dispatched to fulfill must-run requirements.[72] Viridity further states that Dr. Hogan's arguments fail to acknowledge the limits of the Commission's jurisdiction and widespread dislocations and distortions in virtually all economic aspects of relevant energy markets (including fuels, facilities, pricing, environmental attributes, information and participation) and fail to account for any market benefits of demand response.[73] Finally, Viridity argues that Dr. Hogan's arguments fail to reflect the many complex interactions between price, equipment operational requirements, and customer processes, which point to a complex demand response decision.[74]

33. In addition to physical and economic comparability, some commenters contrast the environmental effects of generation and demand response resources. EDF notes that current market prices fail to internalize environmental externalities—including toxic air pollution, greenhouse gas pollution, and land and water use impacts—and other social costs. EDF asserts that the social impact of these environmental externalities is especially acute at peak times, positing that generation sources used for marginal supply at such times ("peaker plants") are among the oldest, dirtiest, and most inefficient in the fleet.[75] The American Clean Skies Foundation contends that fossil-fuel generators are typically mispriced because wholesale prices radically understate the full environmental and health costs associated with such generators.[76] Indeed, some commenters, such as Alcoa, argue that because demand response does not result in the external costs associated with generation (*e.g.,* greenhouse gas emissions), instead resulting in less greenhouse gas emissions than generation, it should be compensated at more than LMP.[77]

34. Taking the opposite view concerning environmental externalities, EPSA states that paying LMP for demand response will merely encourage load to switch to off-grid power (or behind-the-meter generation), while still being compensated, and that such behind-the-meter generation produces more greenhouse gases and other air emissions than electricity from the regional energy market.[78]

35. Some commenters discuss comparability of generation and demand response in terms of the market rules that apply to each resource, arguing that both resources should be comparably compensated only if the same rules for participation apply to both resources, and both resources are held to the same standards for dispatchability.[79] They also argue that similar penalty structures should apply to demand response resources as apply to generation, and that demand response participation must be subject to market monitoring.[80] Calpine adds that to the extent demand response resources are used and treated on par with generators for purposes of compensation, they should be subject to the same performance testing, penalties, and other similar requirements as generators.[81]

36. Some commenters address the comparability of demand response providers and generators in terms of maintaining system reliability. PIO argues that reductions in consumption provide additional reliability.[82] According to the NEMA, North American Electric Reliability Corporation (NERC) standards suggest that, from a reliability perspective, load reductions are equivalent or even superior to generator increases for balancing purposes. For example, while specific to the Western Interconnection, BAL–002–WECC–1 lists interruptible load as comparable to generation deployable within 10 minutes.[83] EPSA maintains that demand response resources are not full substitutes based on the nature of their participation and the rules applicable to each resource in the energy markets, pointing out, for example, that, unlike generators, demand response providers are not subject to regional and NERC mandatory reliability standards.[84]

37. On the other hand, PSEG argues that a MW of demand response does not make the same contribution towards system reliability as a MW of generation, because demand response committed as a capacity resource is only required to perform for a limited number of times over the peak period. PSEG refers to PJM's capacity market, for example, in which demand response only has to perform 10 times during the entire summer peak period, and then only for six hours per response. In contrast, PSEG argues, generators are available for dispatch, 24 hours a day, 365 days per year, except for a small percentage of time for forced and planned outages. PSEG further asserts that additional reliability standards—applicable to generating facilities, but not to demand response—increase the relative reliability value of generating resources to the system.[85]

(b) Appropriateness of a Net Benefits Test

38. Some commenters assert that demand response providers should be paid LMP only when the benefits of demand response compensation outweigh the energy market costs to consumers of paying demand response resources, *i.e.,* when cost-effective, as determined by some type of net benefits or cost-effectiveness test.[86] They maintain that paying LMP for demand response in all hours, including off-peak hours, might not result in net benefits to customers, because the payments might be substantially more than the savings created by reducing the clearing price at that time.[87] According to these commenters, net benefits are most likely to be positive and greatest when the supply curve is steepest, which typically occurs in highest-cost, peak

[71] DR Supporters Aug. 30, 2010 Reply Comments, Kahn Affidavit at 10.

[72] Viridity June 18, 2010 Comments at 13 ("Importantly, Dr. Hogan (and others) in opposing the proposed rulemaking fails to acknowledge the limits of the Commission's jurisdiction, and wide spread dislocations and distortions in virtually all economic aspects of relevant energy markets (including fuels, facilities, pricing, environmental attributes, information and participation)." (Affidavit of John C. Tysseling, PhD)).

[73] Viridity Reply Comments at 13.

[74] Viridity Reply Comments at 14.

[75] EDF Oct. 13, 2010 Comments at 2.

[76] American Clean Skies Foundation May 13, 2010 Comments at 4.

[77] Alcoa May 13, 2010 Comments at 9.

[78] EPSA May 13, 2010 Comments at 60.

[79] ODEC May 13, 2010 Comments at 12; Westar May 13, 2010 Comments at 5–6.

[80] *Id.*

[81] Calpine May 13, 2010 Comments at 5.

[82] PIO May 13, 2010 Comments at 8.

[83] NEMA May 13, 2010 Comments at 2.

[84] EPSA May 13, 2010 Comments at 7.

[85] PSEG May 13, 2010 Comments at 8.

[86] *See generally* May 13, 2010 Comments of NYSCPB; NECA; Capital Power; NECPUC; Maryland Commission; New York Commission; NSTAR; National Grid; NE Public Systems.

[87] Capital Power May 13, 2010 Comments at 5; P3 May 13, 2010 Comments at 5.

hours.[88] They argue that experience to date has shown positive benefits from demand response as a peak system resource, and that, during peak periods, the positive economics of demand response are generally very clear and a cost-benefit analysis may not be needed.[89] Furthermore, some commenters suggest that limiting the hours in which demand response resources are paid LMP could help establish better baselines for measuring whether a demand response provider has, in fact, responded.[90]

39. Some commenters who oppose paying LMP in all hours for demand response also suggest various approaches, including net benefits tests, for determining when LMP should apply. The stated purpose of any of these tests would be to determine the point at which the incremental payment for demand response equals the incremental benefit of the reduction in load; payment of LMP would apply only up to that point.[91]

40. Opposition to use of a net benefits test comes from several directions. Numerous commenters, primarily industrial consumers and some consumer advocates, argue that a net benefits test will reduce competition,[92] have a "chilling effect" on the development of demand response,[93] and be costly and complex to implement.[94] Some commenters further state that no net benefits test is needed because the merit-order bid stack and market clearing function in a wholesale market, by definition, assures that the benefits to the system of demand response exceed the costs, and that the resource that clears is the lowest cost resource; otherwise, demand response would not dispatch ahead of competing alternatives.[95]

41. Another set of commenters argues that a net benefits test is unnecessary and inappropriate for different reasons.[96] These commenters assert that a net benefits test would be very costly and difficult to implement, that RTOs and ISOs cannot implement a net benefits test,[97] and that such a test is unnecessary with the economically efficient compensation level for demand response resources.[98] According to Andy Ott of PJM, "[t]he implicit assumption in developing a benefits test for purposes of compensation would be that you could actually determine individual customers, whether they benefitted or not. That type of analysis would be very costly to implement."[99] Midwest ISO TOs further assert that it would be difficult to prescribe by regulation the hours in which demand response provides net benefits because system conditions and load patterns change across seasons and over time.[100] NEPGA argues that compensating demand response resources at LMP whenever a reduction in consumption suppresses energy prices enough to provide net benefits to load is neither just and reasonable, nor in the public interest.[101] NEPGA states that the Commission recognized in *Amaranth Advisors*[102] that, if prices are suppressed below competitive, market levels, society as a whole is worse off. According to NEPGA, the goal is to get the *right* price—the economically efficient price produced by competitive markets.

42. NYISO posits that a rule mandating payment of LMP–G avoids the need to develop a net benefits test. NYISO further states, however, that if the Commission decides to move forward with LMP for demand response, it should craft a net benefits test that minimizes any opportunities for distorting market prices or exploiting market inefficiencies. Citing support for Dr. Hogan's arguments, NYISO states that "a net benefits test should ensure that the demand response program does not have negative net benefits compared to no program at all. The criterion to apply would focus on the bid-cost savings of generation and load, with the load bids adjusted for the effects of avoidance of the retail rate."[103]

(c) Standardization or Regional Variations in Compensation

43. With regard to potential regional variations for compensation mechanisms across RTO and ISO markets, many commenters, mostly those in support of the NOPR's proposed compensation level, endorse standardization.[104] Some parties, primarily industrial customers and some customer advocates, argue that, regardless of location, both demand response providers and generators provide a comparable service in terms of balancing supply and demand, as discussed above, and therefore should be comparably compensated at the LMP.[105] They argue that fair, non-discriminatory markets must adapt and eliminate barriers to entry to the use and incorporation of traditional and non-traditional resources—where non-traditional resources include actively-managed demand—in the dispatch and management of the electric system.[106] They further posit that the lack of a unified policy itself represents a regulatory barrier to demand response,[107] and that a consistent set of

[88] NECPUC May 13, 2010 Comments at 13; *see also* Sept. 13, 2010 Tr. 13:6–19 (Mr. Keene); Maryland Commission May 13, 2010 Comments at 4–5.

[89] *See, e.g.,* ACEEE Oct. 13, 2010 Comments 3–4. *See also* National Grid May 13, 2010 Comments at 4–5; NSTAR Electric Company (NSTAR) May 14, 2010 Comments at 3; Maryland Commission May 13, 2010 Comments, submitting Analysis of Load Payments and Expenditures under Different Demand Response Compensation Schemes at 10–11 (discussing PJM analysis showing that paying demand response providers LMP for all hours after compensating LSEs for lost revenues would not benefit customers in general but that positive economic benefits results when demand response providers receive LMP during at least the top 100 hours (the highest priced energy hours)).

[90] *See, e.g.,* CDWR May 13, 2010 Comments at 11; National Grid May 13, 2010 Comments at 8; ISO–NE May 13, 2010 Comments at 34; ACEEE Oct. 13, 2010 Comments 4. *But see* ISO–NE May 13, 2010 Comments at 32–33 (contending that no baseline estimation methodology that relies upon historical customer meter data can accurately and reliably estimate an individual customer's normal energy usage pattern if that customer responds frequently to price signals).

[91] NECAA May 13, 2010 Comments at 11; NYSCPB May 13, 2010 Comments at 5; National Grid May 13, 2010 Comments at 4–5.

[92] Viridity Oct. 13, 2010 Comments at 14.

[93] NAPP Oct. 13, 2010 Comments at 2.

[94] Viridity Oct. 13, 2010 Comments at 14; NAPP Oct. 13, 2010 Comments at 3; AMP Oct. 13, 2010 Comments at 4; CAISO Oct. 13, 2010 Comments at 5 and 16.

[95] EDF Oct. 13, 2010 Comments at 2; Viridity Oct. 13, 2010 Comments at 10; ELCON Oct. 13, 2010 Comments at 3.

[96] *See, e.g.,* Oct. 13, 2010 Comments of: Midwest TDUs at 4–5; NEPGA at 8, NJBPU at 2–3; NAPP at 2–3; P3; SPP at 3–4; SDG&E, SoCal Edison, and PG&E at 4–6; Viridity Energy at 2; ELCON at 2; AMP at 2; CDWR at 1, 4–5; CAISO at 4, 15; Detroit Edison at 2; Smart Grid Coalition at 2; Duke Energy at 2; EDF at 2; FTC at 1; EPSA at 4; Indicated New York TOs at 3; Midwest ISO at 9; Steel Manufacturers Ass'n at 3.

[97] P3 Oct. 13, 2010 Comments at 5.

[98] Sept. 13, 2010 Tr. 155:21–24 (Mr. Robinson); Sept. 13, 2010 Tr. 141–42 (Mr. Centolella); Dr. Hogan Sept. 13, 2010 Comments at 5; Sept. 13, 2010 Tr. 60 (Dr. Shanker); Sept. 13, 2010 Tr. 27 (Mr. Newton); SDG&E May 13, 2010 Comments at 4.

[99] Sept. 13, 2010 Tr. 19 (Mr. Ott).

[100] Midwest ISO TOs May 13, 2010 Comments at 16.

[101] NEPGA June 21, 2010 Comments at 1–2.

[102] 120 FERC ¶ 61,085 (2007).

[103] NYISO Oct. 13, 2010 Comments at 3–4.

[104] *See* May 13, 2010 Comments of: ArcelorMittal; Alcoa; ACENY; ACC; AFPA; CDWR; Mayor Bloomberg; Consert; CDRI; CPower; DR Supporters; Derstine's; Durgin; Electricity Committee; ELCON; Electrodynamics; ECS; EnerNOC; ICUB; IECA; IECPA; Irving Forest; Joint Consumers; Limington; Madison Paper; Massachusetts AG; NEMA; National Energy; National League of Cities; NJBPU; NAPP; Occidental; Okemo; Partners; Pennsylvania Department of Environment; Pennsylvania Commission; Rep. Chris Ross; Precision; PRLC; Raritan; SDEG, SoCal; PG&E; Schneider; Governor O'Malley; Steel Manufacturers Ass'n; Verso; Viridity; Virginia Committee; Wal-Mart; Waterville.

[105] *See, e.g.,* Steel Manufacturers Ass'n May 13, 2010 Comments at 12; NEMA May 13, 2010 Comments at 5.

[106] Steel Manufacturers Ass'n May 13, 2010 Comments at 12.

[107] PIO May 13, 2010 Comments at 9; DR Supporters Aug. 30, 2010 Comments at 6–7.

rules reduces the costs and complexities of demand response participation and facilitates training and transfer of personnel across regions.[108] To that end, many commenters argue that adopting a unified approach to demand response compensation at the LMP, as opposed to allowing regional variation including payment of something less than LMP, is necessary to overcome the barriers to entry of demand response providers.[109] Reciting the many benefits of demand reductions in energy use, these commenters support a compensation level that will provide a catalyst for private sector engagement in improved energy management practices. Viridity argues that the near absence of demand response participating in energy markets is powerful empirical proof that current, varying levels of compensation are inadequate—especially in markets that start with a market-based level of compensation and then reduce it by the generation portion of a customer's retail rate (LMP–G).[110]

44. Other commenters caution against standardizing the compensation level for demand response, pointing to regional differences in market structure, State regulatory environment, and resource mix.[111]

3. Commission Determination

45. The Commission acknowledges the diverging opinions of commenters regarding the appropriate level of compensation for demand response resources. As discussed above, commenters are split on this issue, with some in favor of paying the LMP for demand reductions in the day-ahead and real-time energy markets in all hours, others arguing that paying the LMP for demand reductions under any conditions will result in over-compensation or distortions in incentives to reduce consumption, and still others arguing that paying the LMP for demand reductions is only appropriate when it is reasonably certain to be cost-effective.

46. In the face of these diverging opinions, the Commission observes that, as the courts have recognized, "'issues of rate design are fairly technical and, insofar as they are not technical, involve policy judgments that lie at the core of the regulatory mission.'"[112] We also observe that, in making such judgments, the Commission is not limited to textbook economic analysis of the markets subject to our jurisdiction, but also may account for the practical realities of how those markets operate.[113]

47. As discussed further below, the Commission agrees with commenters who support payment of LMP under conditions when it is cost-effective to do so, as determined by the net benefits test described herein.[114] We have previously accepted a variety of ISO and RTO proposals for compensation for demand response resources participating in organized wholesale energy markets. We find, based on the record here that, when a demand response resource has the capability to balance supply and demand as an alternative to a generation resource, and when dispatching and paying LMP to that demand response resource is shown to be cost-effective as determined by the net benefits test described herein, payment by an RTO or ISO of compensation other than the LMP is unjust and unreasonable. When these conditions are met, we find that payment of LMP to these resources will result in just and reasonable rates for ratepayers.[115] As stated in the NOPR, we believe paying demand response resources the LMP will compensate those resources in a manner that reflects the marginal value of the resource to each RTO and ISO.[116]

48. The Commission emphasizes that these findings reflect a recognition that it is appropriate to require compensation at the LMP for the service provided by demand response resources participating in the organized wholesale energy markets only when two conditions are met:

- The first condition is that the demand response resource has the capability to provide the service, *i.e.,* the demand response resource must be able to displace a generation resource in a manner that serves the RTO or ISO in balancing supply and demand.
- The second condition is that the payment of LMP for the provision of the service by the demand response resource must be cost-effective, as determined by the net benefits test described herein.

49. With respect to the first, capability-related condition, we note that a power system must be operated so that there is real-time balance of generation and load, supply and demand. An RTO or ISO dispatches just the amount of generation needed to match expected load at any given moment in time. The system can also be balanced through the reduction of demand.[117] Both can have the same effect of balancing supply and demand at the margin either by increasing supply or by decreasing demand.

50. With respect to the second cost-effectiveness condition, the record leads us to alter the proposal set forth in the NOPR in this proceeding. As various commenters explain, dispatching demand response resources may result in an increased cost per unit to load associated with the decreased amount of load paying the bill, depending on the change in LMP relative to the size of the energy market. As stated above, this is the billing unit effect of dispatching demand response resources.[118] However, when reductions in LMP from implementing demand response results in a reduction in the total amount consumers pay for resources that is greater than the money spent acquiring those demand response resources at LMP, such a payment is a cost-effective purchase from the customers' standpoint.[119] In comparison, when

[108] *See, e.g.,* Alcoa May 13, 2010 Comments at 13.

[109] NECPUC May 13, 2010 Comments at 4; NYISO May 13, 2010 Comments at 16.

[110] Viridity Energy May 13, 2010 Comments at 4.

[111] *See, e.g.,* May 13, 2010 Comments of: ConEd at 3–4; Consumers Energy at 2; California Commission at 9; CMEEC at 2–3, 14–15; Detroit Edison at 3–5; Dominion at 8; Duke Energy at 4; EPSA at 6; Hess at 4; Indicated New York TOs at 3; Maryland Commission at 5; Midwest TDUs at 2, 6; Midwest ISO TOs at 16; National Grid at 5–6; 11–12; New York Commission at 4, 11; NCPA at 3; NYISO at 2–3; ODEC at 27; PJM at 5–6; SPP at 1.

[112] *Elec. Consumers Res. Council* v. *FERC,* 407 F.3d 1232, 1236 (DC Cir. 2005) (quoting *Pub. Util. Comm'n of the State of Cal.* v. *FERC,* 254 F.3d 250, 254 (DC Cir. 2001)); *see also Town of Norwood* v. *FERC,* 962 F.2d 20, 22 (DC Cir. 1992).

[113] *See Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 872 (DC Cir. 1993) ("It is the FERC's established policy to consider equitable factors in designing rates, and to allow for phasing in of changes where appropriate. * * * It is hardly arbitrary or capricious so to temper the dictates of theory by reference to their consequences in practice."); *Vermont Dep't of Pub. Serv.* v. *FERC,* 817 F.2d 127, 135 (DC Cir. 1987) ("Indeed, 'the congressional grant of authority to the agency indicates that the agency's interpretation typically *will* be enhanced by technical knowledge.'" (quoting *Nat'l Fuel Gas Supply Corp.* v. *FERC,* 811 F.2d 1563, 1570 (DC Cir. 1987))); *Columbia Gas Transmission Corp.* v. *FERC,* 750 F.2d 105, 112 (DC Cir. 1984) ("the Commission is vested with wide discretion to balance competing equities against the backdrop of the public interest").

[114] *See generally* May 13, 2010 Comments of NYSCPB; NECA; Capital Power; NECPUC; Maryland Commission; New York Commission; NSTAR; National Grid; NE Public Systems.

[115] The Commission's findings in this Final Rule do not preclude the Commission from determining that other approaches to compensation would be acceptable when these conditions are not met.

[116] NOPR at P 12.

[117] Andrew L. Ott Sept. 13, 2010 Statement at 1.

Economic and Capacity-based demand response clearly provides benefits to regional grid operation and the wholesale market operation. * * * These demand resources provide benefits by providing valuable alternatives to PJM in maintaining operational reliability and in promoting efficient market operations.

Id. at 1; *see also* CDRI May 13, 2010 Comments at 10; CDWR May 13, 2010 Comments at 5; NJPBU May 13, 2010 Comments at 2.

[118] As stated above, dispatching generation resources does not produce this billing unit effect because it does not result in a decrease of load.

[119] As a simple example, assume a market of 100 MW, with a current LMP of $50/MWh without

wholesale energy market customers pay a reduced price attributable to demand response that does not reduce total costs to customers more than the costs of paying LMP to the demand response dispatched, customers suffer a net loss. Implementation of the net benefits test described herein will allow each RTO or ISO to distinguish between these situations.

51. This billing unit effect and the net benefits test through which it is addressed herein, warrant more detailed discussion. In the organized wholesale energy markets, the economic dispatch organizes offers from lowest to highest bid in order to balance supply and demand, taking into account other parameters such as requirements for a generator to operate at a minimum level of output or minimum amount of time, reserve requirements and so forth. With dispatch of a demand response resource, the load also goes down, that is, the level of remaining load falls. However, the "supply" of resources deployed—which includes both generation and demand response—does not fall. The total costs to the system for these resources must then be allocated among the reduced quantity of remaining load.

52. In the absence of the net benefits test described herein, the RTO's or ISO's economic dispatch ordinarily would select demand response when it is the incremental resource with the lowest bid. However, if the next unit of generation is not sufficiently more expensive than the demand response resource, the decrease in LMP multiplied by the remaining load would not be greater than the costs of dispatching the demand response resource. In this situation, dispatching the demand response resource would result in a higher price to remaining customers than the dispatch of the next unit of generation in the bid stack. While the demand response resource appears cost competitive in the dispatch order, selection of the demand response resource increases the total cost per unit to remaining load, and it would not be cost-effective to dispatch the demand response resource.

53. For this reason, the billing unit effect associated with dispatch of a demand response resource in an energy market must be taken into account in the economic comparison of the energy bids of generation resources and demand response resources. Therefore, rather than requiring compensation at LMP in all hours, the Commission requires the use of the net benefits test described herein to ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the cost of dispatching those resources. When the above-noted conditions of capability and of cost-effectiveness are met, it follows that demand response resources that clear in the day-ahead and real-time energy markets should receive the LMP for services provided, as do generation resources. LMP represents the marginal value of an increase in supply or a reduction in consumption at each node within an ISO or RTO, *i.e.,* LMP reflects the marginal value of the last unit of resources necessary to balance supply and demand. Indeed, LMP has been the primary mechanism for compensating generation resources clearing in the organized wholesale energy markets since their formation.[120]

54. The Commission finds that demand response resources that clear in the day-ahead and real-time energy markets should receive the same market-clearing LMP as compensation in the organized wholesale energy markets when those resources meet the conditions established here as a cost-effective alternative to the next highest-bid generation resources for purposes of balancing the energy market. We discuss below the comments filed on these issues.

55. Some commenters dispute that the foregone consumption of energy by demand response resources performs the service of balancing supply and demand in the energy market as would energy supplied by generators in the day-ahead and real-time energy markets, arguing that it is inappropriate to pay electric consumers to not consume.[121] The Commission disagrees. Generation and load must be balanced by the RTOs and ISOs when clearing the day-ahead and real-time energy markets, and such balancing can be accomplished by changes in either supply or demand. The Commission finds that in the organized wholesale energy markets demand response can balance supply and demand as can generation.

56. Commenters that oppose this finding do not adequately recognize a distinctive and perhaps unique characteristic of the electric industry. The electric industry requires instantaneous balancing of supply and demand at all times to maintain reliability. It is in this context that the Commission finds that demand response can balance supply and demand as can generation when dispatched, in the organized wholesale energy markets.

57. Due to a variety of factors, demand responsiveness to price changes is relatively inelastic in the electric industry and does not play as significant a role in setting the wholesale energy market price as in other industries. The Commission has recognized that barriers remain to demand response participation in organized wholesale energy markets. For example, in Order No. 719, the Commission stated:

> [D]espite previous Commission and RTO and ISO efforts to facilitate demand response, regulatory and technological barriers to demand response participation persist, thereby limiting the benefits that would otherwise result. A market functions effectively only when both supply and demand can meaningfully participate, and barriers to demand response limit the meaningful participation of demand in electricity markets.[122]

Barriers to demand response participation at the wholesale level identified by commenters include the lack of a direct connection between wholesale and retail prices,[123] lack of dynamic retail prices (retail prices that vary with changes in marginal wholesale costs), the lack of real-time information sharing, and the lack of market incentives to invest in enabling technologies that would allow electric customers and aggregators of retail customers to see and respond to changes in marginal costs of providing electric service as those costs change. For example, Dr. Kahn states:

> These circumstances—specifically, the fact that pass-through of the LMP is costly and (perhaps) politically infeasible, the possibly prohibitive cost of the metering necessary to charge each ultimate user, moment-by-moment, the often dramatic changes in true marginal costs for each—can justify direct payment at full LMP to distributors and ultimate customers who promise to guarantee

demand response, and an LMP of $40/MWh if 5 MW of demand response were dispatched. Total payments to generators and load would be $4,000 with demand response compared to the previous $5,000. Even though, the reduced LMP is now being paid by less load, only 95 MW compared to 100 MW, the price paid by each remaining customer would decrease from $50/MWh to $42.11/MWh ($4,000/95). Therefore, the payment of LMP to demand resources is cost-effective.

[120] *See* DR Supporters Aug. 30, 2010 Reply Comments (Kahn Affidavit at 2 (footnote omitted)).

[121] *See, e.g.,* ISO–NE May 13, 2010 Comments at 3; APPA May 13, 2010 Comments at 12; Capital Power May 13, 2010 Comments at 2; EPSA May 13, 2010 Comments at 72.

[122] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 83 (citing Federal Energy Regulatory Commission Staff, A National Assessment of Demand Response Potential (June 2009), found at *http://www.ferc.gov/legal/staff-refports/06-09-demand-response.pdf;* Barriers to Demand Side Response in PJM (2009)). In compliance filings submitted by RTOs and ISOs and their market monitors pursuant to Order No. 719, as well as in responsive pleadings, parties have mentioned additional barriers, such as the inability of demand response resources to set LMP, minimum size requirements, and others.

[123] *See, e.g.,* Monitoring Analytics May 13, 2010 Comments at 4–6.

their immediate response to such increases in true marginal costs of supplying them.[124]

Furthermore, EnerNOC states:

On a more fundamental level, the inadequate compensation mechanisms in place today in wholesale energy markets fail to induce sufficient investment in demand response resource infrastructure and expertise that could lead to adequate levels of demand response procurement. Without sufficient investment in the development of demand response, demand response resources simply cannot be procured because they do not yet exist *as resources.* Such investment will not occur so long as compensation undervalues demand response resources.[125]

58. The Commission concludes that paying LMP can address the identified barriers to potential demand response providers.

59. Removing barriers to demand response will lead to increased levels of investment in and thereby participation of demand response resources (and help limit potential generator market power), moving prices closer to the levels that would result if all demand could respond to the marginal cost of energy. To that end, the Commission emphasizes that removing barriers to demand response participation is not the same as giving preferential treatment to demand response providers; rather, it facilitates greater competition, with the markets themselves determining the appropriate mix of resources, which may include both generation and demand response, needed by the RTO and ISO to balance supply and demand based on relative bids in the energy markets. In other words, while the level of compensation provided to each resource affects its willingness and ability to participate in the energy market, ultimately the markets themselves will determine the level of generation and demand response resources needed for purposes of balancing the electricity grid.[126]

60. Another issue raised by a number of commenters, largely representing generators, is whether a lower payment based on LMP–G is the economically-efficient price that sends the proper price signal to a potential demand response provider. These commenters argue that, by not consuming energy, demand response providers already effectively receive "G," the retail rate that they do not need to pay. They therefore contend that demand response providers will be overcompensated unless "G" is deducted from payments made by the RTO or ISO for service in the wholesale energy market, resulting in a payment of LMP–G. These commenters suggest that payment of LMP–G will result in a price signal to demand response providers equivalent to the LMP (*i.e.,* (LMP − G) + G). Similarly, some commenters argue that paying demand response resources the LMP will lead to a wholesale electricity price that is not economically efficient.[127]

61. The Commission disagrees with commenters who contend that demand response resources should be paid LMP–G in all hours. First, as discussed above, demand response resources participating in the organized wholesale energy markets can be cost-effective, as determined by the net benefits test described herein, for balancing supply and demand and, in those circumstances, it follows that the demand response resource should also receive compensation at LMP. Second, such comments largely rely on arguments about economic efficiency, analogizing to incentives for individual generators to bid their marginal cost. These arguments fail to acknowledge the market imperfections caused by the existing barriers to demand response, also discussed above. In Order No. 719, the Commission found that allowing demand response to bid into organized wholesale energy markets "expands the amount of resources available to the market, increases competition, helps reduce prices to consumers and enhances reliability."[128] Furthermore, Dr. Kahn argues that paying demand response LMP sets "up an arrangement that treats proffered reductions in demand on a competitive par with positive supplies; but the one is no more a [case of overcompensation] than the other: the one delivers electric power to users at marginal costs—the other—*reductions in cost*—both at competitively-determined levels."[129]

62. Several other considerations also support this Commission conclusion. In the absence of market power concerns, the Commission does not inquire into the costs or benefits of production for the individual resources participating as supply resources in the organized wholesale electricity markets and will not here, as requested by some commenters, single out demand response resources for adjustments to compensation. The Commission has long held that payment of LMP to supply resources clearing in the day-ahead and real-time energy markets encourages "more efficient supply and demand decisions in both the short run and long run,"[130] notwithstanding the particular costs of production of individual resources. Commenters have not justified why it would be appropriate for the Commission to continue to apply this approach to generation resources yet depart from this approach for demand response resources.

63. In addition, we agree with the New York Commission that given the differences in retail rate structures across RTO footprints and even within individual States, requiring ISOs and RTOs to incorporate such disparate retail rates into wholesale payments to wholesale demand response providers would, even though perhaps feasible, create practical difficulties for a number of parties, including State commissions and ISOs and RTOs. Moreover, incorporating such rates could result in customer uncertainty as to the prevailing wholesale rate.

64. Some arguments advocating paying LMP–G rather than LMP are based on an assumption that demand response resources need to purchase the energy in day-ahead markets or by other means and then "resell" the energy to the market in the form of demand response. However, as the Commission previously stated in *EnergyConnect,* the Commission does not view demand response as a resale of energy back into the energy market.[131] Instead, as the Commission also explained in *EnergyConnect* and in Order No. 719–A, the Commission asserts jurisdiction with respect to demand response in organized wholesale energy markets because of the effect of demand response and related RTO and ISO market rules on Commission-jurisdictional rates.[132]

65. With regard to the "buyers' cartel" argument, the Commission disagrees that market rules establishing circumstances in which particular resources can participate and receive the LMP represents cooperative price setting. RTOs and ISOs evaluate the bids

[124] DR Supporters Sept. 16, 2009 Comments filed in Docket No. EL–09–68–000 (Kahn Affidavit at 6). *See also id.* at 4 (Customers offering to reduce consumption should be induced "to behave as they would if market mechanisms alone were capable of rewarding them directly for efficient economizing.").

[125] EnerNOC May 13, 2010 Comments at 4; *see also* Alcoa May 13, 2010 Comments at 4; Viridity May 13, 2010 Comments at 5–6.

[126] Generation and demand response resources have the potential to earn other revenues through bilateral arrangements, capacity markets where they exist, and ancillary services.

[127] *See* NEPGA June 21, 2010 Comments at 1–2.

[128] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 154.

[129] DR Supporters Aug. 30, 2010 Reply Comments (Kahn Affidavit at 9–10).

[130] *See New England Power Pool,* 101 FERC ¶ 61,344, at P 35 (2002).

[131] *See EnergyConnect,* 130 FERC ¶ 61,031 at P 32.

[132] *Id.; see also* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292, at P 47.

from generation and demand response resources to establish the order of dispatch which secures the most economical supplies needed, consistent with the reliability constraints imposed on the system. Imposing a cost-effectiveness condition does not convert this unit commitment process by the RTO or ISO into collusion among bidders, whether generation or demand response. Furthermore, the market rules administering such a program would be approved by this Commission and demand response resources would be subject to Commission-approved rules, just like any other participants in the organized wholesale energy markets. In addition, arguments that the subject of this proceeding is equivalent to the types of market manipulation investigated in *Amaranth* and *ETP* are groundless and without merit. In *Amaranth,* the trader was accused of engaging in a fraudulent scheme with scienter in connection with a jurisdictional transaction. Here, there is no such allegation, merely speculation that the Commission is somehow facilitating coordination of demand-side bidders in order to lower prices.

66. Some commenters argue that demand response providers and generators should both be compensated at the market clearing price only if both are subject to the same market participation rules, penalty structures, testing requirements, and market monitoring provisions. The ISOs and RTOs already consider how to ensure comparability between demand response and generation in terms of market rules.[133] The Commission agrees that as a general matter demand response providers and generators should be subject to comparable rules that reflect the characteristics of the resource, and expect ISOs and RTOs to continue their evaluation of their existing rules in light of this Final Rule and make appropriate filings with the Commission.

67. Some commenters argue that the Commission should not impose a single pricing rule due to differences in market structure, State regulatory environment, and resource mix among the ISOs and RTOs. While such differences may exist, the commenters have not shown why such differences warrant a different compensation level among the ISOs and RTOs. As discussed above, regardless of the resource mix or the State regulatory environment, demand response, which satisfies the net benefits test described herein and can balance the system, is a cost-effective alternative to generation in the organized wholesale energy markets, and payment of LMP represents the marginal value of a decrease in demand.

B. Implementation of a Net Benefits Test

1. Comments

68. In response to questions that the Commission posed in the Supplemental NOPR, some commenters advocate a net benefits trigger based on a particular price threshold.[134] The NYISO currently has a static bid threshold of $75/MWh in its day-ahead demand response program.[135]

69. However, other commenters assert that using a static threshold based on historical data misses the changes that occur within electricity markets across seasons and years, and that it is erroneous to assume that all demand response occurring above a certain threshold price (for instance, at the very highest loads or highest priced hours) will result in lower costs to wholesale customers and that demand response is not cost-effective at prices below the static threshold price.[136] They argue that a static threshold offer price cannot easily adjust with changing energy market prices which may result in inefficient dispatch of demand resources, excluding demand response participation in hours when demand response can provide beneficial savings and including demand response participation in hours when there are no beneficial savings.[137] The New York Commission supports a dynamic, rather than a static bid threshold, arguing that, while a static bid threshold helps prevent demand response providers from gaming the system by seeking compensation for reducing electricity consumption for reasons other than market prices, it can also limit participation in a demand response program because prices might not exceed the threshold on a consistent basis.[138]

70. In a similar vein, some commenters suggest utilizing a dynamic bid threshold for determining when LMP payment would apply.[139] For example, NECPUC favors use of a dynamic mechanism such as a price threshold based on a preset heat rate of marginal generation and fuel price, like that currently used in New England's Day-Ahead Load Response Program (DALRP),[140] for the ISO–NE control area.[141] National Grid suggests a trigger, determined by each ISO or RTO, using a particular price on the supply offer curve at which the additional cost of paying LMP to demand resources is most likely to be outweighed by LMP reductions in the wholesale energy market as a result of the demand reductions.[142]

71. Still other commenters urge compensating demand response during an ISO- or RTO-defined period of critical high-cost hours in which it is cost-effective to pay LMP. These commenters argue that the effect of demand response on the market clearing price is greatest during a limited number of hours during the year.[143] Therefore, identifying the hours in which to pay LMP to demand response resources could be used as a cost-effective net benefits test with potential savings for ratepayers. According to PJM, further analysis is needed to ascertain the critical high-cost hours in which it will be cost-effective to pay full LMP for demand response.[144]

72. The Consumer Demand Response Initiative (CDRI) proposes a mechanism for determining what demand response resources are cost-effective in any

[133] *See PJM Interconnection, L.L.C.,* 129 FERC ¶ 61,081 (2009).

[134] For example, National Grid states that the threshold could be triggered by a particular price on the supply offer curve at which the additional cost of paying LMP to demand response resources is most likely to be outweighed by LMP reductions in the wholesale energy market as a result of the demand reductions produced by these resources. National Grid May 13, 2010 Comments at 6. Those in favor of a price threshold include National Grid (but allow the ISO or RTO to identify threshold based on analysis); NE Public Systems; NECPUC; ISO–NE (minimum offer price based on fixed heat rate, times a fuel price index); New York Commission (supports ISO–NE's heat rate indexed price threshold).

[135] NYISO implements a day-ahead demand response program by which resources bid into the market at a minimum of $75/MWh and can get paid the LMP. *See* section 4.2.2.9 ("Day-Ahead Bids from Demand Reduction Providers to Supply Energy from Demand Reductions") of NYISO's Market Services Tariff.

[136] Sept. 13, 2010 Tr. 52–53 (Mr. Peterson); Massachusetts AG Oct. 13, 2010 Comments at 23.

[137] Massachusetts AG Oct. 13, 2010 Comments (attachment, Demand Response Potential in ISO New England's Day-Ahead Energy Market, Synapse Energy Economics, Inc. Oct. 11, 2010 at 9). *See generally,* NECPUC May 13, 2010 Comments at 18.

[138] *Id.*

[139] National Grid May 13, 2010 Comments at 6; New York Commission May 13, 2010 Comments at 10; Viridity May 13, 2010 Comments at 24. *See generally* NECPUC, New York Commission; ISO–NE; NSTAR; ACEEE; and NYSCPB Oct. 13, 2010 Comments.

[140] The DALRP establishes a minimum offer price by approximating the variable cost component, in the form of a fuel cost, of a hypothetical peaking unit sufficiently high enough in the supply stack to ensure net benefits. On a monthly basis, this minimum offer price is reset to reflect the product of an appropriate fuel price index and a proxy heat rate. *See* NECPUC Oct. 13, 2010 Comments at 15.

[141] NECPUC Oct. 13, 2010 Comments at 14–16; NECPUC May 13, 2010 Comments at 17.

[142] *Id.* at 5–6.

[143] Maryland Commission May 13, 2010 Comments at 4–5; *see generally* NSTAR, ACEEE and NYSCPB Oct. 13, 2010 Comments.

[144] Maryland Commission May 13, 2010 Comments at 4 n.9.

hour.[145] This dispatch algorithm tests whether the money necessary to compensate demand response is less than the cost savings due to the decreased market-clearing price resulting from implementing demand response. In a sense, it is a dynamic cost/benefit analysis built into the dispatch algorithm. This cost/benefit analysis accounts for the billing unit effect. The billing unit effect occurs when demand response resources are dispatched to balance the system; the associated reduction in load results in fewer MWh of realized load (demand) paying for the sum of generator and demand response resource MWh, so load pays an effective rate which is greater than the LMP set to procure resources. Some commenters assert that if the Commission finds that a net benefits test is needed, it should require organized wholesale energy market operators to implement a proposal similar to that submitted by CDRI.[146]

73. Under the proposal submitted by CDRI, the demand response bids are part of the supply stack to which a security-constrained economic dispatch process is applied. All demand response bids that result in a lower price to customers, including consideration of the reduced number of billing units, are selected while those bids that raise the price, as compared to selecting the next generation bid in the supply stack, are not. This dispatch algorithm, as proposed, would be used by the ISO or RTO to determine a revised LMP that would be charged to load. The revised LMP creates a surplus (or over-collection) of revenue for the ISO or RTO that is then distributed to the LSEs through a settlement algorithm with the goal of holding LSEs harmless.[147]

74. During the September 2010 Technical Conference, Dr. Ethier of ISO–NE stated that a dynamic net benefits test done on an hourly basis that examines the effect of the demand response resource on LMPs, similar to that proposed by CDRI, would become very complicated to implement and require essentially an iterative process.[148] Dr. Ethier states that the ISO would have to run the dispatch model to formulate a base LMP with no demand response and then re-run it with demand response in the market; however those two iterations alone do not "cover the whole waterfront" in terms of the possible iterations required. According to Dr. Ethier, the ISO could dispatch too much demand response the first time, or if the ISO first rejected dispatching demand response, it may need to go back and dispatch smaller amounts of demand response to determine what would happen to the LMPs. Dr. Ethier stated that it is unclear where the ISO would stop the iteration of testing the impact on LMPs of dispatching demand response.[149] Andy Ott of PJM also stated during the technical conference that implementing a net benefits test would entail an iterative process that would be costly and difficult, if the RTO could even do it.[150]

75. Other commenters do not support the use of a net benefits test, but state that if one is adopted it should be based on general principles that RTOs and ISOs must apply to their systems in determining when LMP payments will apply.[151] A few commenters articulated specific criteria to be used in a net benefits test.[152] AEP believes that the objective of an incentive payment for demand response resources on the basis of broad market benefits can be achieved through a review of the costs and benefits of individual providers. Constellation states that any net benefits test should be based on the difference between the value consumers receive from energy and the cost of energy production.[153]

76. ISO–NE argues that a net benefits test should be based on economic efficiency, the sum of producer and consumer surplus, which suggests that demand response incentives ought to be provided to encourage demand reductions when the cost of energy production exceeds the value of consumption, and to encourage usage when the cost of energy production is less than the value of consumption. ISO–NE further states that a net benefits test that focuses solely on consumer savings ignores the value lost by consumers when energy consumption levels are reduced in response to incentive payments. ISO–NE posits that any variant of a LMP payment should be limited to a very small number of high-priced hours to minimize the economic distortions and avoid significant administrative complexities.[154]

77. A few commenters state that policies affecting energy prices will also impact capacity prices because generation owners with fixed costs must raise capacity price offers to remain financially viable at lower energy prices.[155] ISO–NE and Pepco argue, therefore, that the Commission should adopt a net benefits test that considers the impact of demand response compensation on both energy and capacity markets.[156] According to ISO–NE, when considering capacity market impacts under full-LMP compensation, long-term increases in capacity prices in response to suppressed LMPs offset consumer savings and leaves consumers worse off over time.[157] Robert Weishaar of the DR Supporters argues that properly compensating demand response should flatten the load profile and decrease the forecast of load projections, which would reduce capacity clearing prices.[158] Donald Sipe of CDRI adds that to the extent that scarcity revenues are not sufficient, capacity markets are designed to ensure that a generator's capital costs are recovered; in a forward market that looks ahead as load adjusts, one can see whether a resource is performing or not. For purposes of long-run reliability, he argues, as long as compensation is in the amount that is necessary to induce new investment and reflects market value, the argument that demand response in the bid stack will push out generators is only true if generators are higher priced than the consumer resources that are brought by demand response.[159]

[145] The approach submitted by CDRI was developed for implementation in the ISO–NE day-ahead energy market. The discussion here is generalized to be applicable to any energy market that uses security-constrained economic dispatch to select the least-cost resources and establish a market-clearing price.

[146] PIO July 27, 2010 Comments at 6; Massachusetts AG Oct. 13, 2010 Comments at 11; Viridity Oct. 13, 2010 Comments at 2. *See* CDRI May 13, 2010 Comments for a full description of the algorithms.

[147] CDRI May 13, 2010 Comments Attachment B at 18. CDRI states that the dispatch and settlement algorithms "could be employed to evaluate dispatch and assure customer benefits, without being employed to perform allocations and settlements." CDRI Oct. 13, 2010 Comments at 4.

[148] Sept. 13, 2010 Tr. 80–81 (Dr. Ethier).

[149] *Id.*

[150] Sept. 13, 2010 Tr. 82:16–21 (Mr. Ott).

[151] *See generally* AEP, Midwest ISO, Occidental, NYISO, Constellation Oct. 13, 2010 Comments.

[152] *See, e.g.,* Midwest ISO October 13, 2010 Comments at 9–14 and Table 1 (setting forth comprehensive list of benefits and costs of demand response by type of market participants); Occidental October 13, 2010 Comments at 4–5 (any net benefits test must take into consideration offsetting variables, such as higher LMPs in the subsequent periods where demand rebound increases market price, and capacity market price effects); AEP October 13, 2010 Comments at 3–4 (AEP does not recommend the use of a societal benefits component (*i.e.,* health, environment, or employment efforts)).

[153] Constellation October 13, 2010 Comments at 3–4.

[154] ISO–NE Oct. 13, 2010 Comments at 4–5 and 21.

[155] *See, e.g.,* Sept. 13, 2010 Tr. 94:13–22 (Dr. Shanker); Sept. 13, 2010 Tr. 98:4–24 (Mr. Peterson); Sept. 13, 2010 Tr. 99:2–7 (Mr. Sunderhauf); ISO–NE Oct. 13, 2010 Comments at 5.

[156] Sept. 13, 2010 Tr. 99:1–24 (Mr. Sunderhauf); ISO–NE Oct. 13, 2010 Comments at 5.

[157] ISO–NE Oct. 13, 2010 Comments at 6.

[158] Sept. 13, 2010 Tr. 103–104 (Mr. Weishaar).

[159] Sept. 13, 2010 Tr. 106:16–24 (Mr. Sipe).

2. Commission Determination

78. For the reasons discussed previously, the Commission is requiring each RTO and ISO to implement the net benefits test described herein to determine whether a demand response resource is cost-effective. More specifically, the Commission is adopting two distinct requirements with respect to the net benefits test. While we find that the integration of the billing unit effect into the RTO/ISO dispatch processes has the potential to more precisely identify when demand response resources are cost-effective, we also recognize and understand the position of several of the RTOs and ISOs that modification of their dispatch algorithms may be difficult in the near term. Given these technical difficulties, we will require to RTOs and ISO to perform (1) the net benefits test described below to determine on a monthly basis under which conditions it is cost-effective to pay full LMP to demand resources; [160] and (2) a study of the feasibility of developing a mechanism for determining the cost-effective dispatch of demand resources.

79. First we direct each RTO and ISO to undertake an analysis on a monthly basis, based on historical data and the RTO's or ISO's previous year's supply curve, to identify a price threshold to estimate where customer net benefits, as defined herein, would occur. The RTO or ISO should determine the threshold price corresponding to the point along the supply stack for each month beyond which the benefit to load from the reduced LMP resulting from dispatching demand response resources exceeds the increased cost to load associated with the billing unit effect, and update the calculation monthly. The ISOs and RTOs are to determine monthly threshold prices based on historical data. The threshold prices would be updated monthly as new data becomes available and posted on the RTO Web site. For example, the RTO should conduct an analysis of supply curves for January through December 2010 to be used as a starting point to establish threshold prices for 2011. Those numbers would be updated monthly during 2011 for significant changes in resource availability and fuel prices, with the process repeated monthly to reflect that month's data from the previous year.[161] The supply curve analysis should be updated monthly, by the 15th day of the preceeding month in advance of the effective date, to allow demand response providers as well as other market participants to plan, while still reflecting current supply conditions.[162]

80. Based on historical evidence and analysis submitted in this proceeding, the threshold point along the supply stack for each month will fall in the area where the supply curve becomes inelastic, rather than the extreme steep portion at the peak or in the flat portion of the supply curve.[163] In other words, LMP will be paid to demand response resources during periods when the nature of the supply curve is such that small decreases in generation being called to serve load will result in price decreases sufficient to offset the billing unit effect. The Massachusetts AG noted that the actual supply stack has locally flat and steep sections at all bid prices. We recognize that the threshold price approach we adopt here may result in instances both when demand response is not paid the LMP but would be cost-effective and when demand response is paid the LMP but is not cost-effective. We accept this result given the apparent computational difficulty of adopting a dynamic approach that incorporates the billing unit effect in the dispatch algorithms at this time.[164]

81. We direct each RTO and ISO to file its analysis as supporting documentation to the accompanying tariff revisions with the Commission on or before July 22, 2011, along with proposed tariff revisions necessary to comply with this Final Rule. The filing should include the data, analytical methods and the actual supply curves used to determine the monthly threshold prices for the last 12 months to show how the RTO or ISO would calculate the curves.[165] The Commission-approved net benefits test methodology must be posted on the RTO or ISO's Web site, with supporting documentation. The RTO or ISO must also post the price threshold levels that would have been in effect in the previous 12 months. In addition, when the net benefits test becomes effective, the supply curve analysis for the historic month that corresponds to the effective month should be updated for current fuel prices, unit availabilities, and any other significant changes to historic supply curve and posted on the RTO Web site (for example, the supply curve analysis for the March price threshold would be posted in mid-February). Finally, the supply curve analyses for all months should be updated and posted on the RTO Web site if a significant change to the composition or slope of the historic monthly curves occurs, such as extended outages or retirements not previously reflected.

82. Some commenters argue that that there would be no need for a net benefits test if demand response resources were paid LMP–G, while others argue that use of a net benefits test otherwise undermines our decision to compensate demand response resources at the LMP. As stated above, the Commission finds that when a demand response resource participating in an organized wholesale energy market is capable of balancing supply and demand in the energy market and is cost-effective, as determined by the net benefits test described herein, that demand response resource should receive the same compensation, the LMP, as a generation resource when dispatched. We see no reason to reduce that compensation simply to avoid the use of the net benefits test that will ensure benefits to load.

83. Nearly every participant in the net benefits panel at the September 13, 2010 Technical Conference agreed that it would be counterproductive to defer to the RTO or ISO stakeholder process to determine when demand response provides net benefits without explicit guidance from the Commission.[166] We

[160] There will be inherent differences in the supply curves determined by each RTO and ISO under the net benefits test required herein due to decisions the RTOs and ISOs must make based on supply data for their regions, the mathematical methods each RTO and ISO chooses to use for smoothing the supply curves, the certainty of changes in supply due to outages in each region, local generation heat rates, and the choice of relevant fuel price indices.

[161] The ISOs and RTOs are to select a representative supply curve for the study month, smooth the supply curve using numerical methods, and find the price/quantity pair above which a one megawatt reduction in quantity that is paid LMP would result in a larger percentage decrease in price than the corresponding percentage decrease in quantity (billing units). Beyond that point, a reduction in quantity everywhere along an upward sloping supply curve would be cost-effective.

[162] Thus, the test is to determine where: (Delta LMP × MWh consumed) > (LMP new × DR); where LMP new is the market clearing price after demand response (DR) is dispatched and Delta LMP is the price before DR is dispatched minus the market clearing price after DR is dispatched.

[163] Supply elasticity is defined as the percentage change in quantity supplied divided by the percentage change in price. When the elasticity is less than or equal to one, supply is considered inelastic. So, for example, in the inelastic portion of the supply curve, a reduction in quantity supplied by one percent will result in more than a one percent decrease in price. Using the terms related to demand response compensation, the billing unit effect (percentage change in quantity supplied) will be more than offset by lower LMP (percentage change in price), thus resulting in lower prices for wholesale load.

[164] *See supra* note 114.

[165] *See supra* P 6.

[166] "[G]etting this decision resolved is an impediment to all the other stuff we want to do with price response to demand, and DR generally in our market * * * so until we get through this, we're not going to make much progress * * * the

Continued

believe that this result, and the guidance provided in this Final Rule will provide for timely improvements to RTO and ISO market pricing for demand response resources participating in organized wholesale energy markets.

84. In addition to requiring each RTO and ISO to construct the net benefits test described herein, the Commission also imposes a second requirement for each RTO and ISO to undertake a study, examining the requirements for and impacts of implementing a dynamic approach to determine when paying demand response resources LMP results in net benefits to customers. We believe that integration of the billing unit effect into RTO and ISO dispatch algorithms holds promise for more accurately integrating demand resources on a dynamic basis into the dispatch of the RTOs and ISOs. In theory, this could help ensure that the cost-effective level of demand response resources is dispatched or scheduled into the organized wholesale energy markets. Given the potential of software enhancements to determine the amount of cost-effective demand response resources purchased in the day-ahead and real-time energy markets, we believe that it would be useful for the Commission to know more about the feasibility of and requirements for implementing improvements to the existing dispatch algorithms. Therefore, we will require each RTO and ISO to undertake a study, either individually or collectively, examining the requirements for, costs of, and impacts of implementing a dynamic net benefits approach to the dispatch of demand resources that takes into account the billing unit effect in the economic dispatch in both the day-ahead and real-time energy markets, and to file the results of their study with the Commission on or before September 21, 2012.

85. ISO–NE and Pepco suggest that the net benefits test also consider the impact of demand response compensation on both energy and capacity markets. However, this Final Rule is focused only on organized wholesale energy markets, not capacity markets.[167] Given the differences in capacity markets among the ISOs and RTOs, the record in this proceeding provides neither a reasonable basis for including capacity market effects in net benefits calculations in the energy markets, nor have ISO–NE and Pepco provided a methodology for taking such effects into account. Indeed, in some cases, the capacity markets already reflect energy and ancillary service revenue in determining capacity prices.

C. Measurement and Verification

1. NOPR Proposal

86. In the NOPR, the Commission explained that demand response curtailment is a reduction in actual load as compared to the demand response provider's expected level of electricity consumption.[168] The NOPR did not address measurement and verification of demand response.

87. Each RTO and ISO with a demand response program has procedures for the measurement and verification of demand response. These procedures include techniques to establish a customer baseline for each demand response participant. This customer baseline then becomes the basis for measuring the quantity of demand response delivered to the wholesale market. Customer baselines are often based on historic load information, such as an average of five of the last ten comparable days' hourly load profile. Techniques vary among RTOs and ISOs and most have several techniques that may be allowed, depending on the demand response provider's characteristics.[169]

2. Comments

88. Commenters assert that the integrity of a demand response program is heavily dependent on measurement and verification.[170] Some commenters raise the issue that paying LMP in all hours presents a significant challenge to the accurate measurement and verification of demand response.[171] ISO–NE argues that when a market participant schedules demand reductions for many consecutive days, baselines may become stale—no longer reflecting a customer's "normal" electricity usage.[172] ISO–NE goes on to argue that "it is necessary to limit the number of hours or days that a demand resource could clear in the energy market so that the customer's 'normal' load can be estimated" to avoid the potential for manipulation.[173] In the context of the Commission's proposal to pay demand response the LMP in all hours, ISO–NE goes on to advocate requiring demand response to establish baselines by purchasing energy in the day-ahead market as a way to overcome its concerns with statistical baseline methods.[174] ISO–NE IMM makes similar arguments and recommendations.[175] Westar also appears to support this approach.[176]

89. Similarly, CPower notes that with some baseline methods, paying LMP in all hours could reward demand responders for any shift in demand from the baseline, not just shifting load from high LMP hours to low LMP hours, or could simply shift load from day-to-day in different hours to affect the calculation of actual curtailment, which it labels "checkerboarding." However, CPower believes that the capability of consumption management to shed or shift load for many hours is well into the future, and perhaps not a current concern. CPower also believes that baseline standards along with market monitoring will develop to meet these concerns.[177]

90. ISO–NE IMM asserts that "[if] the Commission adopts any proposal that permits the use of an administrative baseline it should explicitly state that any demand reductions offered into Commission-jurisdictional markets that are not genuine, even if they are the result of 'normal' activity * * * may be violations of the Commission's anti-

implication of that is if you send something back that leaves a lot of room for debate, it's going to be a while on all those other things." Testimony of Robert Ethier, Vice President, Market Design, ISO–NE, Sept. 13, 2010 Tr. at 136.

[167] Additionally, the arguments presented for focusing on the effect of demand response compensation in wholesale energy markets on capacity markets were not convincing—that decreases in energy market revenues by generators will be recouped in the form of increased capacity prices. First, they fail to consider how the increased participation by demand resources could actually increase potential suppliers in the capacity markets by reducing barriers to demand resources, which would tend to drive capacity prices down. Second, they did not examine the way in which capacity markets already may take into account energy revenues.

[168] *Demand Response Compensation in Organized Wholesale Energy Markets,* FERC Stats. & Regs. ¶ 32,656, at P 1 (2010).

[169] *See, e.g.,* ISO/RTO Council, North American Wholesale Electricity Demand Response 2010 Comparison, under the tab for "Performance Evaluation Methods" (*http://www.isorto.org/atf/cf/%7B5b4e85c6-7eac-40a0-8dc3-003829518ebd%7D/IRC%20DR%20M&V%20STANDARDS%20IMPLEMENTATION%20COMPARISON%20(20100524).XLS*).

[170] Illinois CUB May 14, 2010 Comments at 16–17; Joint Consumers May 13, 2010 Comments at 12; P3 May 12, 2010 Comments at 38; Westar May 13, 2010 Comments at 3.

[171] *See, e.g.,* ISO–NE May 13, 2010 Comments at 32.

[172] *Id.*

[173] ISO–NE May 13, 2010 Comments at 34. ISO–NE identifies several practices that, in its view, might be deployed by a demand responder to receive payment when it has not, in fact, responded to price. ISO–NE states that observations of such behavior in the Fall of 2007 led it to limit the hours demand response offers could clear the market. Citing *ISO New England Inc.,* Docket No. ER08–538–000 (February 5, 2008 filing). ISO–NE May 13, 2010 Comments at 32–34.

[174] *Id.*

[175] ISO–NE IMM May 13, 2010 Comments at 9–13 and Attachment A.

[176] Westar May 13, 2010 Comments at 3.

[177] CPower May 13, 2010 Comments at 4–5.

manipulation rules and subject to penalties thereunder."[178]

91. Noting the ongoing efforts by the industry and the North American Energy Standards Board (NAESB) on measurement and verification, EnerNOC takes the view that resolution of customer baseline issues should not delay the issuance of this Final Rule.[179]

92. Finally, some commenters assert that measurement and verification methods should not be standardized, but left to the RTOs and ISOs to reflect the unique features of their individual energy, ancillary services, and capacity markets.[180]

3. Commission Determination

93. The Commission agrees with commenters who assert that measurement and verification are critical to the integrity and success of demand response programs. Without a determination of a demand response provider's expected use of power, the ISOs and RTOs cannot determine whether that provider has in fact reduced its energy usage when paid to do so. Towards that end, all the RTOs and ISOs already have measurement and verification protocols for their demand response programs.[181] In addition, we have adopted Phase I standards for measurement and verification published by the North American Energy Standards Board,[182] and have recognized the potential benefits of the continuing NAESB effort to craft Phase II standards with more substantive and consistent wholesale standards for measurement and verification.[183]

94. A number of commenters maintain that compensating demand response resources at the LMP during all hours could make determining baselines for demand response providers exceedingly difficult. However, the impact of our adopting the net benefits test described herein is that the LMP will not be paid to demand response resources in all hours. Accordingly, implementation of this Final Rule would not appear to prevent the determination of appropriate baselines. Nonetheless, we direct ISOs and RTOs to review their current requirements in light of the changes in this Final Rule and develop appropriate revisions and modifications, if necessary, to ensure that their baselines remain accurate and that they can verify that demand response resources have performed. Specifically, we direct each RTO and ISO to include as part of the compliance filing required herein, an explanation of how its measurement and verification protocols will continue to ensure that appropriate baselines are set, and that demand response will continue to be adequately measured and verified as necessary to ensure the performance of each demand response resource. If necessary, each RTO and ISO should propose any changes needed to ensure that measurement and verification of demand response will adequately capture the performance (or non-performance) of each participating demand response market participant to be consistent with the requirements of this Final Rule.

95. Finally, we agree with ISO–NE IMM that demand reductions that are not genuine may be violations of the Commission's anti-manipulation rules.[184] Allegations of such behavior will continue to be investigated, and when appropriate, sanctions will be brought to bear.

D. Cost Allocation

1. NOPR Proposal

96. In response to the NOPR and September 13, 2010 Technical Conference, many commenters argue that, in order to determine the justness and reasonableness of the proposed compensation level, the corresponding cost allocation must be considered.[185] More specifically, these commenters raise concerns regarding how the costs associated with payment of LMP for demand response will be allocated, or assigned, within an ISO or RTO. Several commenters assert that the issues of cost allocation and net benefits are inherently linked, so that the Commission must address both issues together.[186]

2. Comments

97. Comments reveal five specific methods for cost allocation: (1) Assignment of costs to the load serving entity (LSE) associated with the demand response provider, (2) assignment of costs broadly to all purchasing customers, (3) bifurcated assignment of costs with some directly assigned to a LSE and others assigned broadly, (4) directly assign the cost for demand response compensation to the retail customers that bid the demand response into the wholesale market, and (5) the settlement method proposed by CDRI, which incorporates the cost of demand response into the dispatch algorithm. Some commenters argue not for a specific method, but for each regional entity to select and employ a method of its own,[187] and a few other commenters assert that the Commission need not address cost allocation in this proceeding.[188]

98. Some commenters argue that costs should be assigned to the LSE associated with the demand response provider because it is this entity that receives the full benefit of demand response.[189] Others argue that costs should be assigned broadly to all purchasing customers because of the concept of cost causation.[190] Cost causation dictates that the costs of demand response should be allocated directly to those entities that benefit from the demand response service provided.[191] Another method presented involves a bifurcated assignment of costs, with some directly assigned to a

[178] ISO–NE IMM May 13, 2010 Comments at 14 (footnotes omitted) (ISO–NE MMU also notes that "[i]n assessing whether demand reductions are genuine, allowance should be made for non-performance analogous to a generator's forced outage.").

[179] EnerNOC, Inc. May 13, 2010 Comments at 4.

[180] ECS May 13, 2010 Comments at 3; Indicated New York TOs May 13, 2010 Comments at 2–3; Midwest ISO May 13, 2010 Comments at 17, 21; National Grid May 13, 2010 Comments at 11–12; NSTAR May 14, 2010 Comments at 9; PPL May 13, 2010 Comments at 4.

[181] *See, e.g., PJM Interconnection, L.L.C.,* 123 FERC ¶ 61,257 (2008).

[182] *Standards for Business Practices and Communication Protocols for Public Utilities,* Final Rule, 131 FERC ¶ 61,022 (2010).

[183] *Id.,* at P 32–34.

[184] 18 CFR 1.c (2010).

[185] ISO–NE May 13, 2010 Comments at at 39–40; *see also* May 13, 2010 Comments of: AEP at 6–10; CAISO at 6; ConEd at 2; Hess at 3; ICC at 12; PJM at 8; Potomac Economics at 3; Massachusetts AG at 11; Midwest ISO TOs at 5–6; Midwest TDUs at 13; EEI at 5; NECPUC at 12, 22; NECA at 11; RRI at 6; SDG&G at 3–4.

[186] As further addressed below, several commenters assert that the costs of demand response compensation should be borne by only those market participants determined to have benefitted from the subject load reduction, as determined by some type of net benefits test. *See, e.g.,* May 13, 2010 Comments of: ISO–NE at 5–6; NECPUC at 22; PJM at 12–14; P3 at 37–38.

[187] EPSA May 12, 2010 Comments at 67; Midwest TDUs May 13, 2010 Comments at 1; ODEC May 14, 2010 Comments at 5; Potomac Economics May 14, 2010 Comments at 9–10; RRI May 13, 2010 Comments at 4; SoCal Edison May 13, 2010 Comments at 4 (advocating that the local regulatory authority is the proper entity to regulate cost allocation); Viridity May 13, 2010 Comments at 24; EnerNOC Sept. 13, 2010 Comments at 1; Midwest TDUs Sept. 13, 2010 Comments at 2.

[188] Massachusetts AG May 13, 2010 Comments at 9–10.

[189] PJM May 13, 2010 Comments at 15; Midwest ISO May 13, 2010 Comments at 6; CAISO May 13, 2010 Comments at 6; Detroit Edison May 13, 2010 Comments at 3–4; EEI May 13, 2010 Comments at 5; NUSCO May 13, 2010 Comments at 2; National Grid Sept. 13, 2010 Comments at 2–3; Midwest ISO Oct. 13, 2010 Comments at 4.

[190] NECPUC May 13, 2010 Comments at 22; DC OPC May 13, 2010 Comments at 4; PCA Sept. 10, 2010 Comments at 4; Steel Manufactures Ass'n Sept. 13, 2010 Comments at 5; Ohio Commission Sept. 13, 2010 Comments at 4; Wal-Mart Sept. 14, 2010 Comments at 3.

[191] PJM May 13, 2010 Comments at 9; NECPUC May 13, 2010 Comments at 22; PCA Sept. 10, 2010 Comments at 4.

LSE and others assigned broadly.[192] The fourth method suggested is to directly assign the costs of demand response to the retail customer that bid the demand response into the wholesale market.[193] Lastly, the settlement algorithm proposed by CDRI adjusts upward the day-ahead price paid by the customers that participate in the day-ahead energy market to account for these costs.[194]

3. Commission Determination

99. When a demand response provider curtails, the RTO experiences a reduction in load with a corresponding reduction in billing units through which the RTO derives revenue. When the two conditions discussed above are met, however, the RTO must pay LMP to both generators and demand response providers for the resources that clear the energy market. The difference between the amount owed by the RTO to resources, including demand response providers, and the revenue it derives from load results in a negative balance that must be addressed through cost allocation. Therefore, a method is needed to ensure that RTOs and ISOs recover the costs of obtaining demand response.

100. Since the dispatch of demand response resources affects the LMP charged, and will result in a lower LMP, the customers benefitting from that lower LMP depends upon transmission constraints, and the price separation such constraints cause within the RTO. In some hours in which transmission constraints do not exist, RTOs establish a single LMP for their entire system (a single pricing area) in which case the demand response would result in a benefit to all customers on the system. When transmission constraints are present, however, LMPs often vary by zone, or other geographic areas. Allocating the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response resource reduces the market price for energy at the time when the demand response resource is committed or dispatched will reasonably allocate the costs of demand response to those who benefit from the lower prices produced by dispatching demand response.[195]

101. We reject the various other methods of cost allocation suggested by commenters. Assignment of all costs to the LSE associated with the demand response provider, as suggested by some commenters, would not include others who benefit from the demand response. Bifurcated assignment of costs to the LSE and to others appears to represent an arbitrary division of cost responsibility without regard to the degree to which each receives benefits.

102. We therefore find just and reasonable the requirement that each RTO and ISO allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time when the demand response resource is committed or dispatched. Accordingly, each RTO and ISO is required to make a compliance filing on or before July 22, 2011 that either demonstrates that its current cost allocation methodology appropriately allocates costs to those that benefit from the demand reduction or proposes revised tariff provisions that conform to this requirement.

E. Commission Jurisdiction

1. Comments

103. Some commenters, including several State commissions and LSEs, express concern about whether and how standardizing demand response compensation in the wholesale market will affect treatment of demand response at the retail level. They assert that the issue of demand response compensation is fundamentally intertwined with retail rates, ratepayer issues, and State jurisdictional concerns.[196] Some commenters note general concerns about the need for Federal and State level coordination. They assert that many States have taken significant steps to install advanced meters and implement programs to encourage efficient use of energy and that the success of State-level efforts should be a factor in deciding whether and how to implement demand response programs in the wholesale market.[197] According to these commenters, a Commission-mandated compensation level could have the unintended consequence of retarding the expansion of price-responsive demand at the retail level.[198]

104. Other commenters flatly question the Commission's jurisdiction to set the compensation for demand response in wholesale energy markets. They argue that it is within the purview of retail regulatory authorities to take into account local policies and concerns, and the types of demand response being offered, when determining the appropriate compensation level.[199] Indeed, the California Commission seeks clarification that this Commission does not seek to regulate retail customer rates or seeks LSE oversight authority traditionally exercised by States. The California Commission asserts that this Commission's actions concerning CAISO's Proxy Demand Resource tariff filing[200] illustrates that demand response settlement mechanisms are within the authority of the California Commission.[201]

[192] PJM May 13, 2010 Comments at 12; ISO–NE May 13, 2010 Comments at 5.

[193] DC OPC May 13, 2010 Comments at 4. It concedes that this could be a complex undertaking and would result in billing a retail customer for energy that did not consume. *Id.*

[194] CDRI, Integration of Demand Response Into Day Ahead Markets (Attachment B), May 13, 2010 Comments at 16.

[195] This approach is consistent with long-standing judicially-endorsed cost allocation principles. *See, e.g., Midwest ISO Transmission Owners* v. *FERC,* 373 F.3d 1361, 1368, 1370–71 (DC Cir. 2004); *see also Illinois Commerce Comm'n* v. *FERC,* 576 F.3d 470, 476 (7th Cir. 2009).

[196] *See, e.g.,* CAISO May 13, 2010 Comments at 12; PJM May 13, 2010 Comments at 8 (appropriate and efficient demand response compensation may require coordination between the Commission, retail regulatory authorities, competitive retail suppliers, and other RTOs).

[197] *See* ISO–NE IMM May 13, 2010 Comments at 6.

[198] Illinois Commission May 13, 2010 Comments at 8; PJM May 13, 2010 Comments at 23; EEI May 13, 2010 Comments at 4; Capital Power May 13, 2010 Comments at 5; ODEC May 13, 2010 Comments at 60; Steel Producers May 13, 2010 Comments at 2.

[199] *See* Illinois Commission May 13, 2010 Comments at 13; CAISO May 13, 2010 Comments at 12–13; PJM IMM May 13, 2010 Comments at 5 ("The assertion that demand side participants should be paid full LMP, regardless of their retail tariff rate, because the current approach of paying LMP minus G represents an intervention into retail rate design, cannot be correct. The entire demand side program exists only because of the disconnect between wholesale and retail rates. The assertion that the program design should not account for the details of retail rate design leads to the conclusion that there should be no demand side program at all."); NECPUC May 13, 2010 Comments at 25 ("As energy market customers benefit most from both a well-functioning wholesale market and robust participation in retail programs, a balance between these two segments is essential. Compensation that increases demand response resource participation in the wholesale market should not be so generous, from the perspective of the customer, that it makes participation in retail programs pale in comparison."); SDG&E, SoCal Edison, and PG&E May 13, 2010 Comments at 4 ("[M]andating that ISOs take on settlement responsibility or precluding any retail settlement between retail customers, LSEs or DRPs would intrude on retail jurisdictional authority and contravenes the premise of separation outlined in Order 719."); Consumers Energy May 13, 2010 Comments at 3; Detroit Edison May 13, 2010 Comments at 4.

[200] *See California Independent System Operator Corp.,* 132 FERC ¶ 61,045 (2010).

[201] California Commission May 13, 2010 Comments at 9–10. 1. *See* also SDG&E, SCE, PG&E May 13, 2010 Comments at 2 ("[T]he Commission should clarify that its order does not preclude LRAs from administering retail revenue settlements between retail customers, Load Serving Entities

105. Other commenters foresee retail regulatory authorities effectively taking an end-run around any Commission-mandated compensation level by adjusting retail rate design or prohibiting jurisdictional end-use customers from participating in wholesale market opportunities available to demand response resources.[202] The Illinois Commission argues:

> [W]hen load serving entities are vertically integrated with generation regulated under state authority * * * any non-zero payment to a demand response resource reduces the revenues to generators under the state regulatory authority. The result is a leakage of money to an entity outside of the state's regulatory authority. Therefore, retail rates to all customers may need to be increased in order to recover the costs to generators that would have otherwise been recovered through the purchase of electricity, but instead went to the payment of a demand response resource. Therefore, compensating demand response resources may increase the likelihood that state commissions will prohibit the participation of demand response resources in the jurisdictions.[203]

106. Similarly, PJM states that the prohibition devised by retail regulatory authorities with jurisdiction over smaller distributors that deliver 4 million MWh or fewer per annum may entail the revocation of previously provided permission to participate in some or all of the wholesale market opportunities for demand resources.[204]

107. Some commenters further posit that, even where retail regulatory authorities do not prohibit or limit demand response participation, they may make adjustments to the retail rate, which affect the ultimate compensation that the retail customer will be paid for its demand reductions.[205] For example, the OMS asserts,

> If the Commission were to adopt the proposed rule, state commissions and LSEs could correct this distorted price signal by revising retail tariffs for customers that do business with [aggregators of retail customers] in order to charge the retail rate to participating customers for energy which was not consumed or metered as a result of load reductions.[206]

108. Another set of commenters, especially generators, assert that due to the disconnect between wholesale and retail issues related to demand response, Commission-mandated payments for demand response will fail to address true barriers to demand response, which exist, they assert, at the retail level. These commenters argue that the Commission's actions in this proceeding ignore the fact that the primary barrier to demand response is the disconnect between retail and wholesale prices and, according to these commenters, the remedy resides at the retail—not wholesale—level where there is a lack of dynamic pricing.[207] For example, some commenters recognize that the lack of retail real-time pricing is a barrier to demand response participation but further assert that whatever changes the Commission makes to wholesale demand response (where there is real-time pricing) will not address that fundamental problem.[208]

109. On the other hand, some commenters, such as commercial customers, wholly reject challenges to the Commission's authority to set the compensation level for demand response occurring in organized wholesale energy markets.[209] They assert that the FPA gives the Commission broad authority to correct market flaws, including compensation for demand response.[210]

110. Some commenters further argue that any disconnect between wholesale and retail issues relevant to demand response should not negate the Commission's efforts in this proceeding. They argue that dynamic retail pricing, retail shopping opportunities and the potential for retail energy efficiency measures are no substitute for adequate wholesale demand response compensation and the deployment of demand response measures akin to a generator.[211]

111. Moreover, some commenters assert that, while the Commission has authority to establish the compensation level for demand response in the wholesale market, the Commission cannot require subtraction of retail rate components from the LMP rate, reasoning that retail rates reflect a myriad of local concerns beyond the Commission's jurisdiction. These commenters assert that LMP reflects the wholesale value of the demand response service provided and that proponents of the LMP–G formulation (subtracting a portion of the retail rate) seek to draw the Commission into a review of retail rate matters beyond its purview.[212] Additionally, these commenters point to the difficulty of isolating the generation component of the retail rate from other components, such as transmission, distribution, and overhead. They argue that different retail rate contracts reflect different costs of generation, depending on local circumstances existing at the time the contract was executed, and that retail rate structures reflect a wide range of competing considerations, such as cost causation, the impact of rate design on employment, and the state of the local economy, all of which are appropriately left to State commissions. These commenters posit that, instead of tailoring the wholesale rate, *i.e.,* LMP, to retail rate conditions, it is better to get the wholesale rate right in the first instance and then allow retail rate structures adjust as needed to wholesale market conditions.[213] According to Dr. Kahn, accounting for the retail rate in this Final Rule would "ignore the proper scope of the Commission's regulatory responsibilities, the fact that the great majority of retail rate designs are economically inefficient and that it is retail rates that should not be permitted

(LSEs) and Demand Response Providers (DRPs) associated with DR participation in wholesale markets.").

[202] *See* PJM May 13, 2010 Comments at 24; PJM May 13, 2010 Comments at 18 (It is reasonable to assume that each retail regulatory authority in PJM will re-examine the impact of load reduction based on wholesale compensation equal to the LMP, including cost allocation, on the LSEs subject to its jurisdiction, and potentially re-align retail market rules affecting economic load response participation.); Delaware Commission and NECPUC May 13, 2010 Comment at 25; OMS May 13, 2010 Comments at 7 (State commissions and LSEs have significant concerns that the potential costs for non-participating customers may exceed the benefits that ARCs can provide to their States and to participating customers, so State commissions will have a significant disincentive to support the participation of ARCs in RTO energy markets and in their States if LMP compensation is adopted).

[203] Illinois Commission May 13, 2010 Comments at 15.

[204] PJM May 13, 2010 Comments at 20–21.

[205] CAISO May 13, 2010 Comments at 4.

[206] OMS May 13, 2010 Comments at 3. *See also* EEI May 13, 2010 Comments at 4.

[207] Calpine May 13, 2010 Comments at 3.

[208] *See* EPSA May 13, 2010 Comments at 7 ("The NOPR incorrectly attempts to resolve retail market barriers to DR participation (*i.e.,* lack of dynamic pricing) through a wholesale pricing fix."); RRI Energy May 13, 2010 Comments at 5 ("The NOPR is essentially trying to use an inefficient wholesale solution to remedy a retail problem. The NOPR does not attempt to address (nor should it attempt to address) the various retail rate structures that demand response providers in various regions of the country face."); The Brattle Group May 13, 2010 Comments at 8 ("[T]he appropriate avoidable retail generation rate is best done through agreements between the LSE and the curtailment service provider under the oversight of the relevant retail regulating authority. This approach . . . avoids requiring the RTO to sort through potentially complicated retail rate structures."); Steel Manufacturers Ass'n May 13, 2010 Comments at 9 ("[T]here is no rational basis for the Commission, or RTOs, to adopting varying demand response participation or compensation rules based on the retail pricing method of otherwise qualified participating loads.").

[209] DR Supporters Aug. 30, 2010 Reply Comments at 4.

[210] *Id.*

[211] Wal-Mart May 13, 2010 Comments at 11.

[212] Viridity June 18, 2010 Comments at 13.

[213] Viridity June 18, 2010 Comments at 14.

to undermine efficient wholesale rates rather than the reverse." [214]

2. Commission Determination

112. We begin by rejecting challenges to the Commission's authority to set the compensation level for demand response in organized wholesale energy markets. Section 205 of the FPA tasks the Commission with ensuring that all rates and charges for or "in connection with" the transmission or sale for resale of electric energy in interstate commerce, and all rules and regulations "affecting or pertaining to" such rates or charges are just and reasonable.[215] The Commission has previously explained that it has jurisdiction over demand response in organized wholesale energy markets, because it directly affects wholesale rates.[216]

113. For this reason, the Commission has jurisdiction to regulate the market rules under which an ISO or RTO accepts a demand response bid into a wholesale market.[217] Furthermore, as discussed above, the Commission's actions in this proceeding are consistent with Congressional policy requiring Federal level facilitation of demand response, because this Final Rule is designed to remove barriers to demand response participation in the organized wholesale energy markets.

114. Nevertheless, we recognize that jurisdiction over demand response is a complex matter that lies at the confluence of State and Federal jurisdiction. By issuing this Final Rule, the Commission is not requiring actions that would violate State laws or regulations. The Commission also is not regulating retail rates or usurping or impeding State regulatory efforts concerning demand response.

115. We acknowledge that many barriers to demand response participation exist and that our ability to address such barriers is limited to the confines of our statutory authority. At the same time, the FPA requires the Commission to ensure that the rates charged for energy in wholesale energy markets are just, reasonable, and not unduly discriminatory or preferential. The Commission has the authority, indeed the responsibility, to assure that wholesale rates are just and reasonable. Therefore, we disagree with commenters who would have the Commission refrain from acting on demand response compensation in the organized wholesale energy markets because of the potential actions that State retail regulatory authorities may or may not take. As we note above, this Final Rule is not intended to usurp State authority or impede States from taking any actions within their authority. Rather, the Commission is taking action here to fulfill its statutory mandate to ensure just, reasonable, and not unduly discriminatory or preferential wholesale rates.

V. Information Collection Statement

116. The Office of Management and Budget (OMB) requires that OMB approve certain information collection and data retention requirements imposed by agency rules.[218] Therefore, the Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[219]

117. OMB's regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

118. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate and Information Collection Costs: The estimated Public Reporting burden and cost for the requirements contained in the final rule follow.

FERC–516 data collection	Number of respondents (a)	Number of responses per respondent per year (b)	Hours per response (c)	Total annual hours (d) [a*b*c]
Compliance filing, including tariff provisions and analysis (one-time filing, due 7/22/2011).	6 (RTOs and ISOs).	1 (one-time filing).	300	1,800 (one-time filing).
Study on dynamic net benefits approach (one-time filing, due 9/21/2012)	6 (RTOs and ISOs).	1 (one-time filing).	2,000	12,000 (one-time filing).
Monthly update to price threshold and Web posting (due monthly, starting after the compliance filing due 7/22/2011).	6 (RTOs and ISOs).	12	50	3,600.

In Year 1, the following requirements are imposed [220]: (1) Compliance filing due on or before July 22, 2011, and (2) monthly updates (for months 5–12, and starting after the compliance filing). The total corresponding burden hours are estimated to be: 1,800 hrs. + (8 filings * 6 respondents * 50 hrs./filing), for a total of 4,200 hours. The corresponding total cost is estimated to be: 4,200 hours * $220/hour, for a total of $924,000.

In Year 2, (a) the monthly update to the price threshold, and (b) the study on dynamic net benefits approach (due on or before September 21, 2012) are imposed. The corresponding total burden is estimated to be 3,600 + 12,000 hours, for a total of 15,600 hours. The corresponding total cost estimate is: 15,600 hours * $220/hour, for a total of $3,432,000.

In Year 3, the monthly update to the price threshold is imposed. The corresponding total burden and cost are

[214] DR Supporters Aug. 30, 2010 Comments (Kahn Affidavit at 4).

[215] 16 U.S.C. 824d (2006).

[216] Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 at P 47.

[217] Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 at P 52.

[218] 5 CFR 1320.11(b) (2010).

[219] 44 U.S.C. 3507(d) (2006).

[220] The one-time study is due on or before September 21, 2012. For the purpose of the burden and cost estimates, we are including all of the burden and cost related to the study in Year 2, although filers may perform part of the work in Year 1.

estimated to be 3,600 hours and $792,000 (3,600 hours * $220/hour).

Title: FERC–516, "Electric Rate Schedules and Tariff Filings".

Action: Proposed Collections.

OMB Control No: 1902–0096.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One-time filings for (a) the compliance filing, due on or before July 22, 2011, and (b) the study on dynamic net benefits approach, due on or before September 21, 2012. In addition, monthly updates to the price threshold and Web posting will be required starting after the compliance filing.

Necessity of the Information: The information from FERC–516 enables the Commission to exercise its statutory obligation under sections 205 and 206 of the FPA. FPA section 205 specifies that all rates and charges, and related contracts and service conditions for wholesale sales and transmission of energy in interstate commerce be filed with the Commission and must be "just and reasonable." In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential.

119. In Order No. 719, the Commission emphasized the importance of demand response as a vehicle for improving the competitiveness of organized wholesale electricity markets and ensuring supplies of energy at just, reasonable and not unduly discriminatory or preferential rates. This Final Rule addresses the need for organized wholesale energy markets to provide compensation to demand response resources on a comparable basis to supply-side resources when demand response resources are comparable to supply-side resources, so that both supply and demand can meaningfully participate. This final rule establishes a specific compensation approach for demand response resources participating in organized wholesale energy markets, administered by RTOs and ISOs. Each Commission-approved RTO and ISO that has a tariff provision providing for participation of demand response resources in its organized wholesale energy market must: (a) Pay demand response resources the market price (full LMP) for energy (when found to be cost-effective as determined by the net benefits test described herein), (b) submit a one-time compliance filing, (c) perform monthly updates to the Price Threshold, and (d) submit a one-time Study on Dynamic Net Benefits Approach.

120. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Information Clearance Officer, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, phone:* (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of the final rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments to OMB should be submitted by e-mail to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM10–17 and OMB Control Number 1902–0096.

VI. Environmental Analysis

121. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[221] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.[222]

VII. Regulatory Flexibility Act

122. The Regulatory Flexibility Act of 1980 (RFA)[223] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[224] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[225] ISOs and RTOs, not small entities, are impacted directly by this rule.

123. California Independent System Operator Corp. (CAISO) is a non-profit organization with over 54,000 megawatts of capacity and over 25,000 circuit miles of power lines.

124. New York Independent System Operator, Inc. (NYISO) is a non-profit organization that oversees wholesale electricity markets, dispatches over 500 generators, and manages a nearly 11,000-mile network of high-voltage lines.

125. PJM Interconnection, L.L.C. (PJM) is comprised of more than 600 members including power generators, transmission owners, electricity distributors, power marketers, and large industrial customers, serving 13 States and the District of Columbia.

126. Southwest Power Pool, Inc. (SPP) is comprised of 61 members serving over 6.2 million households in nine States and has almost 50,000 miles of transmission lines.

127. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 145,000 megawatts of installed generation. Midwest ISO has over 57,000 miles of transmission lines and serves 13 States and one Canadian province.

128. ISO New England, Inc. (ISO–NE) is a regional transmission organization serving six States in New England. The system is comprised of more than 8,000 miles of high-voltage transmission lines and over 350 generators.

129. The Commission believes this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

VIII. Document Availability

130. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal

[221] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[222] 18 CFR 380.4(a)(15) (2010).

[223] 5 U.S.C. 601–612 (2006).

[224] 13 CFR 121.101 (2010).

[225] 13 CFR 121.201, Sector 22, Utilities.

business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

131. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

132. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

133. This Final Rule will become effective on April 25, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission. Commissioner Moeller dissenting with a separate statement attached.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding a new paragraph (g)(1)(v) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(1) * * *

(v) Demand response compensation in energy markets. Each Commission-approved independent system operator or regional transmission organization that has a tariff provision permitting demand response resources to participate as a resource in the energy market by reducing consumption of electric energy from their expected levels in response to price signals must:

(A) Pay to those demand response resources the market price for energy for these reductions when these demand response resources have the capability to balance supply and demand and when payment of the market price for energy to these resources is cost-effective as determined by a net benefits test accepted by the Commission;

(B) Allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time when the demand response resource is committed or dispatched.

* * * * *

Note: The following appendices will not be published in the Code of Federal Regulations.

Appendix 1—List of Commenters

Alcan Primary Products Corp. (Alcan)
Alcoa Inc. (Alcoa)
Alliance for Clean Energy New York, Inc. (ACENY)
Alliance to Save Energy (Alliance)
American Chemistry Council (ACC)
American Clean Skies Foundation
American Council for an Energy-Efficient Economy (ACEEE)
American Electric Power Service Corporation (AEP)
American Forest & Paper Association (AFPA)
American Municipal Power, Inc. (AMP)
American Public Power Association (APPA)
American Wind Energy Association (AWEA)
ArcelorMittal USA Inc. (ArcelorMittal)
Battelle Pacific Northwest Laboratories (Battelle)
Boston College Law School Administrative Law Class (BC Law)
California Department of Water Resources State Water Project (CDWR)
California Independent System Operator Corporation (CAISO)
California Public Utilities Commission (California Commission)
Calpine Corp. (Calpine)
Capital Power Corporation (Capital Power)
Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities)
Citizens for Pennsylvania's Future (PennFuture)
Coalition of Midwest Transmission Customers (CMTC)
Connecticut Municipal Electric Energy Cooperative (CMEEC)
Consert Inc. (Consert)
Conservation Law Foundation (CLF)
Consolidated Edison Solutions, Inc. (ConEd)
Constellation Energy Commodities Group, Inc. (Constellation)
Consumer Demand Response Initiative (CDRI)
Consumer Power Advocates (CPA)
Consumers Energy Company (Consumers Energy)
CPG Advisors, Inc. (CPG)
CPower, Inc. (CPower)
Crane & Co., Inc. (Crane)
Delaware Public Service Commission (Delaware Commission)
Demand Response and Smart Grid Coalition (Smart Grid Coalition)
Demand Response Supporters (DR Supporters)
Derstine's Inc. (Derstine's)
Detroit Edison Company (Detroit Edison)
Direct Energy Services, LLC (Direct Energy)
Dominion Resources Services, Inc. (Dominion)
Dr. Alfred E. Kahn (Dr. Kahn)
Dr. Charles J. Cicchetti (Dr. Cicchetti)
Dr. Roy J. Shanker (Dr. Shanker)
Dr. William W. Hogan (Dr. Hogan)
Duke Energy Corporation (Duke Energy)
Durgin and Crowell Lumber Co., Inc. (Durgin)
Edison Electric Institute (EEI)
Edison Mission Energy (Edison Mission)
Electric Power Supply Association (EPSA)
Electricity Committee
Electricity Consumers Resource Council (ELCON)
Electrodynamics, Inc. (Electrodynamics)
Energy Curtailment Specialists, Inc. (ECS)
EnergyConnect (EnergyConnect)
Energy Future Coalition (EFC)
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FirstEnergy Service Company (FirstEnergy)
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Illinois Commerce Commission (ICC)
Independent Power Producers of New York, Inc. (IPPNY)
Indicated New York Transmission Owners (Indicated New York TOs)
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Intergrys Energy Services, Inc. (Intergrys)
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ISO New England Inc. (ISO–NE)
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Jiminy Peak Mountain Resort, LLC
Joint Consumer Advocates (Joint Consumers)
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Appendix 2—Dissenting Statement

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Demand Response Compensation in Organized Wholesale Energy Markets

Docket No. RM10–17–000
(Issued March 15, 2011)

MOELLER, Commissioner, *dissenting:*

While the merits of various methods for compensating demand response were discussed at length in the course of this rulemaking, nowhere did I review any comment or hear any testimony that questioned the benefit of having demand response resources participate in the organized wholesale energy markets. On this point, there is no debate. The fact is that demand response plays a very important role in these markets by providing significant economic, reliability, and other market-related benefits.

However, in a misguided attempt to encourage greater demand response participation in the organized energy markets, today's Rule imposes a standardized and preferential compensation scheme that conflicts both with the Commission's efforts to promote competitive markets and with its statutory mandate to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates.[1] For these reasons, I cannot support this Rule.

Standardizing Demand Response Compensation

As an initial matter, RTOs and ISOs currently offer different types of demand response products that vary from region to region and in terms of capability and services offered in the day-ahead and real-time energy markets. Moreover, the RTOs and ISOs to date have been working with their market participants in a stakeholder process to design demand response compensation rules that are tailored to suit the needs of their individual energy markets. However, this will all change once the Rule takes effect and this existing framework is replaced with the requirement that every organized wholesale energy market pay demand resources the market price for energy (LMP) when its demand reductions are, in theory, found to be cost-effective.

As I recognized in my initial statement in this proceeding, organized markets such as the PJM Interconnection have already demonstrated the ability to develop demand response compensation rules. Accordingly, I would have preferred to allow these markets to continue to develop their own rules. Different demand response products will have different values that reflect their varying capabilities and to require a standard payment fails to reflect these meaningful differences.[2]

However, without ever determining that the existing region-by-region approach to compensation is unjust and unreasonable, the Rule implies that the current approach is no longer adequate to ensure that rates remain just and reasonable. In turn, the Rule finds that "greater uniformity in compensating demand response resources" is required and as justification for its action, references the existence of various barriers that limit the participation of demand response in the energy markets.[3] The majority ultimately concludes that these barriers can be removed by better equipping demand response providers with the financial resources to invest in enabling technologies.[4] This is to say that the majority believes that paying demand resources more money will help overcome these barriers and encourage more participation. The Rule, however, never clearly explains how the existence of barriers, in turn, justifies a payment of full LMP to demand resources.

The Rule (like the NOPR) does not sufficiently discuss the need for standardizing compensation across the organized markets or elaborate on how standardization will remove genuine barriers that prevent meaningful participation by demand resources in the energy markets.[5] While the Energy Policy Act of 2005 states that the policy of the U.S. Government is to remove unnecessary barriers to demand response, the statute never authorized the Commission to stimulate increased demand response participation by requiring its compensation to include incentives or preferential treatment.[6] Although, the majority is quick to claim "that removing barriers to demand response participation is not the same as giving preferential treatment to demand response providers * * *", this is exactly what is occurring in this Rule.[7] As discussed below, the majority's determination is troubling as the Rule both affords preferential treatment to demand response resources and unduly discriminates against them in other respects.

*Demand Response Resources are Comparable * * * Sometimes*

At the outset, the concept of "comparability" is at the core of this rulemaking, i.e., whether demand response resources are capable of providing a service comparable to generation resources and if so, whether these resources should receive comparable compensation for a comparable

[1] 16 U.S.C. § 824d (2006).

[2] California Commission May 13, 2010 Comments at 6, "[P]romulgating a uniform national rule at this time may inadvertently impede the implementation of optimal demand response compensation for an individual ISO or RTO which address the needs of that particular region." The California Commission "is concerned that mandatory 'one size fits all' pricing may stifle national and regional efforts to collect valuable data and experience regarding the effects of different demand response program designs on consumer participation and conflict with Congressional objectives."

[3] Rule at P 17, 57–59.

[4] Rule at P 57–59.

[5] Significant barriers do exist which prevent demand response from reaching its full potential. Specifically, 24 barriers were identified in our *National Assessment of Demand Response Potential,* FERC Staff Report, (June 2009) at 65–67.

[6] *See* Energy Policy Act of 2005, Pub. L. No. 109–58, § 1252(f), 119 Stat. 594, 965 (2005).

[7] Rule at P 59.

service. On this point, I believe they should.[8] This is not to say that a megawatt produced is the same as a megawatt not consumed; they are not perfect equivalents. The characteristics of a megawatt and a "negawatt" are different, both in terms of physics and in economic impact.

Assuming, however, that a demand resource can provide a balancing service that is identical to that of a generation resource, it would make sense that a demand resource providing a comparable service would receive comparable compensation. But this may not occur under the Rule. The majority explains that if a demand resource is capable of providing a service comparable to a generation resource, it will only be eligible to receive comparable compensation, by definition, if it can also be determined that the resource will result in a price-lowering effect to the market by passing a net benefits test.[9]

In no other circumstance is a resource required to show that its participation will depress the market price in order to receive comparable compensation for a comparable service.[10] Such a definition unduly discriminates against demand resources and as such, this requirement is unjust, unreasonable, and unduly discriminatory.

Overcompensating Demand Resources and the Net Benefits Test

At first glance, the Rule's requirement that RTOs and ISOs pay demand response resources the LMP only when it is deemed cost-effective appears to make sense. There is near-universal agreement that the LMP reflects the value of the marginal unit, and as such, it sends the proper price signal to keep supply and demand in relative balance. Accordingly, the Rule explains that if the demand resource is capable of providing a comparable service and is also cost-effective (*i.e.*, using a net benefits test to ensure that the overall benefit of the reduced LMP that results from dispatching demand recourses exceeds the cost of dispatching those resources), then this resource should be paid the same as a generation resource. However, the decision to pay demand resources the full LMP under such circumstances actually results in overcompensation that is economically inefficient, preferential to demand resources, and unduly discriminatory towards other market resources.

An example may help to illustrate a major flaw with this Rule. Assume that both a generation resource and a demand resource bid into the energy market and both bids are accepted and paid the LMP ($100). Then consider the fact that the demand resource will save an amount that it would have otherwise paid by not purchasing generation at the retail rate ("G"), which is $25. While the Rule requires that RTOs and ISOs pay the demand resource the LMP (which is the identical amount the generation resource receives), the Rule effectively ignores the fact that the demand resource will actually receive a total compensation of LMP+G ($125) as a result of its decision not to consume.[11] Meanwhile, the generation resource will only receive the LMP ($100) payment as a result of its decision to produce. While the Rule's intent is to ensure that a demand resource receives "the same compensation, the LMP, as a generation resource", this is not the actual result.[12] In this example, what will happen is that the Rule will require that the demand response resource be overcompensated by $25.[13]

The Rule effectively finds that demand resources being compensated at the value of full LMP is not enough, so instead requires that demand resource be paid the full LMP plus be allowed to retain the savings associated with its avoided retail generation cost. Professor William W. Hogan refers to this outcome as a "double-payment" because demand resources would "receive" both the cost savings from not consuming electricity at a particular price, plus an LMP payment for not consuming that same increment of electricity.[14] Not only is this result not comparable (by valuing a negawatt more than a megawatt) and economically inefficient (by distorting the price signal), but this preferential compensation will harm the efficiency of the competitive wholesale energy markets.

The use of a net benefits test further reduces competitive efficiency and only complicates the issue. As the Rule explains, the net benefits test involves the determination of a threshold price point that is plotted along a historical supply curve in an attempt to accurately calculate whether the cost of procuring additional demand response is outweighed by the value it brings to the market in the form of a lower LMP.[15] However, this test, which attempts to justify the LMP payment by promising a "win-win" outcome, is nothing more than a fig leaf that provides little protection against the long-term potential for unintended market damage. As recognized by ISO–NE, generation is not dispatched and paid for only when such generation reduces LMP, instead generation is dispatched and paid for only when it is cost-effective.[16] Likewise, logic would require that demand resources be treated similar to generation resources and be similarly cost-effective.

During a technical conference convened to discuss the specific question on the necessity of a net benefits test, the Commission heard testimony from a panel of experts. A clear majority of the witnesses (representing a spectrum of interests that included demand response advocates, economists, generators, and the RTOs and ISOs) argued against the use of a complicated and admittedly imprecise[17] net benefits test.[18] Chief among their concerns was that a net benefits test is unnecessary since the market clearing function in a wholesale market, by definition, serves to guarantee that the resource that clears the market is the lowest-cost resource.[19] Other experts commented that the net benefits test would be complicated, costly to implement, and of little value.[20] Notably, Dr. Alfred E. Kahn, the majority's oft-quoted expert in defense of the full LMP payment, did not opine on the merit of subjecting the LMP payment to a net benefits test.

Further, as explained by Dr. Roy J. Shanker, if the Commission adopted the payment of LMP minus the retail rate ("G"), then there is no need for a net benefits test since the customer is paid the difference between the LMP and what they would have paid under their retail rate, which is their net benefit.[21] He testified that the "Net Benefits

[8] As explained below, I believe that comparable compensation is represented by the value realized by the demand resource for providing a comparable service, regardless of whether the source of that value is a payment from the market or a savings by the resource.

[9] Rule at P 47–50.

[10] Testimony of Audrey Zibelman, President and CEO of Viridity Energy, Inc., Sept. 13, 2010 Tr. at 119, "[T]he fact that we're debating this [net benefits test] is somewhat absurd. We have not required any other resource to demonstrate a benefit in order to enter this market."

[11] The proper economic measure of value realized by the demand resource is one where the RTO or ISO makes a reduction from the LMP to account for the retail rate, but then recognizes that the savings associated with the avoided retail generation cost should be added back into the equation, *i.e.*, (LMP–G)+G.

[12] Rule at P 82. If it were the result, the generation resource would be paid the LMP, $100, and the demand resource would be paid $75 and realize an additional $25 in retail rate savings. Accordingly, both resources realize equivalent compensation valued at $100.

[13] Ohio Commission May 13, 2010 Comments at 6, "[T]he Commission's proposal that RTOs pay demand response resources the full LMP takes the incentives for wholesale demand response resources a step too far. It would provide an incentive to the supplier of a demand response resource that exceeds the payments available to an equivalent supply resource. The Commission should instead focus on removing the existing barriers in the wholesale markets * * *."

[14] *See* Attachment to Answer of EPSA, Providing Incentives for Efficient Demand Response, Dr. William W. Hogan, October 29, 2009 (Docket No. EL09–68).

[15] Testimony of Robert Weishaar, Jr., Attorney for Demand Response Supporters, Sept. 13, 2010 Tr. at 46–47, "Administratively constructing an LMP-based break point for compensating Demand Response participation would ignore many other qualitative and quantitative benefits of Demand Response. Focusing only on the LMP impacts of Demand Response is problematic."

[16] ISO–NE May 13, 2010 Comments at 3–4.

[17] Rule at P 80. Recognizing that "the threshold price approach we adopt here may result in instances both when demand response is not paid the LMP but would be cost-effective and when demand response is paid the LMP but is not cost-effective."

[18] Testimony of Donald Sipe, Attorney for Consumer Demand Response Initiative, Sept. 13, 2010 Tr. at 43, "[T]here is probably not a need for a Net Benefits Test. But if one is adopted, it should not be an artificial threshold that can be wrong both ways. It should not be a mechanism that treats DR differently than generation."

[19] Viridity Energy, Inc., Oct. 13, 2010 Comments at 10. *See also* ELCON Oct. 13, 2010 Comments at 3; and Environmental Defense Fund Comments at 2.

[20] Testimony of Andy Ott, Sr. Vice President, PJM Interconnection, Sept. 13, 2010 Tr. at 19, "[Y]ou have to use caution to actually take a benefits test and apply that to compensation, because you may have unintended consequences."

[21] Testimony of Roy J. Shanker, Ph.D, PJM Power Providers Group, Sept. 13, 2010 Tr. at 60, "If the Commission adopts the appropriate non-discriminatory pricing for Demand Response, and payment of LMP minus the retail rate in the context of customer that face a fixed retail rate, then there is no need for a Net Benefits test."

criteria is troubling in and of itself, as it explicitly incorporates consideration of portfolio effects caused by the reduced demand on all load payments, versus the economic decision-making of individual market participants pursuing their own legitimate business purpose." [22]

I similarly agree that this test is unnecessary and will only distort price signals by attracting more demand response than is economically efficient.[23] The use of a net benefits test also is troubling in that the Commission's decision can be viewed as somehow equating the concept of a just and reasonable rate with a lower price.[24] However, I recognize that to defend its compensation scheme, the majority needed some proposal that could arguably demonstrate that the cost of paying full LMP to demand resources would be outweighed by the "benefit" of a lower market price.[25] The net benefits test serves this unenviable role.

Relationship to State Retail Regulation

The Rule recognizes that the demand resource will retain the retail rate ("G") as part of the provider's total compensation, but declines to account for this savings citing "practical difficulties" for State commissions, RTOs and ISOs.[26] While the authority over retail rates is properly within the jurisdiction of the State commissions, under the LMP–G equation, the RTO/ISO merely subtracts the retail rate; it does not interfere with the retail rate in any way.[27] Although the Rule refers to the New York Commission's position that subtracting the retail rate would be an "administrative burden" or create "undue confusion" [28], other State commissions disagree and contend that the retail rate can be deducted without any concern about impacting the States' retail jurisdiction.[29]

Moreover, the Rule does not conclude that LMP–G would interfere with the retail jurisdiction of the States, but goes as far as to acknowledge the subtraction of G is "perhaps feasible." [30] The fact is that this calculation is quite feasible. Markets such as the PJM Interconnection currently subtract the retail rate portion from the LMP payment and there is no evidence that accounting for the retail rate by making the necessary reduction is either burdensome or interferes with the retail jurisdiction of State commissions.[31]

The Unintended Consequences of Paying Too Much

Today's determination, unencumbered by "textbook economic analysis of the markets subject to our jurisdiction" will undoubtedly have effects, both in the short-term and the long-term.[32] The intended consequence of providing additional compensation to demand resources is that demand response participation will increase in the energy markets. In turn, this additional demand response participation will have the effect of lowering the market price. However, it is at this point where the unintended effects will begin to appear.

With a reduced LMP, the price signal sent to customers will be that the cost of power is cheaper so they may decide to use more power even though the real cost of producing that power is now higher. Such a result turns the concept of scarcity pricing on its head and results in an economically inefficient outcome. Conversely, customers who are demand response providers now stand to receive more than the market price as an incentive to curtail their consumption and will begin to make inefficient decisions about using power.[33] Such inefficiencies will result in customers experiencing a short-term benefit by way of a lower LMP, but will also impose long-term costs on the energy markets.[34]

The long-term costs of allowing demand resources to receive preferential compensation will manifest themselves in various ways. As noted in my initial statement in this proceeding, the lack of dynamic prices at the retail level is the primary barrier to demand response participation. This Rule does not remedy this barrier and customers who pay fixed retail rates will not benefit from lower wholesale market prices. Meanwhile, at the wholesale level, the corrosive effect of overcompensating demand resources over time will come at the expense of other resources, particularly generation resources that will have less to invest in maintaining existing facilities and financing new facilities.[35]

The Commission's recent progress in promoting competitive wholesale energy markets has the potential to be undone as a result of this well-meaning, but misguided Rule. I believe in the proven value of market solutions and therefore agree with the majority's statement that "while the level of compensation provided to each resource affects its willingness and ability to participate in the market, ultimately the markets themselves will determine the level of generation and demand response resources needed for purposes of balancing the electricity grid." [36] That's precisely how markets should work. Price signals will attract resources and new investment when prices are high, and perhaps not so much

[22] *Id.,* Tr. at 61.

[23] EPSA May 13, 2010 Comments at 23. *See also* May 13, 2010 Comments of APPA at 13; FTC at 9; Midwest TDUs at 14; Mirant at 2; New York Commission at 5; PJM at 6; PSEG at 5; and Potomac Economics at 6–8.

[24] Courts have stated that to be "just and reasonable," rates must fall within a "zone of reasonableness" where they are neither "less than compensatory" to producers nor "excessive" to consumers. *Farmers Union Central Exchange v. FERC,* 734 F.2d 1486 (D.C. Cir. 1984), cert denied, 469 U.S. 1034 (1984). *See also* EPSA May 13, 2010 Comments at 19; and ISO–NE at 26–28.

[25] Testimony of Ohio Commissioner Paul Centolella, Sept. 13, 2010 Tr. at 141, "The Net Benefits test reflects a recognition that paying full LMP may over-compensate Demand Response and increase cost to customers."

[26] Rule at P 63. The RTOs and ISOs uniformly state that compensation which ignores the retail rate will yield uneconomic outcomes and overcompensate the demand resource. Moreover, none of the RTOs or ISOs claimed it would be difficult to subtract the retail rate from the LMP payment. *See* May 13, 2010 Comments of CAISO at 5–6; ISO–NE at 17–26; Midwest ISO at 6–11; NYISO at 12–16; and PJM at 5–16.

[27] Testimony of Joel Newton, New England Power Generators Ass'n, Sept. 13, 2010 Tr. at 75; "The Commission is getting into a real close area with retail ratemaking as we go through this entire process. For the Commission then to say 'ignore the LSE payment' which is the realm of State commissions, it's almost as you're just hoping that the State commissions will go out and fix it. The State commissions can do that * * * [b]ut the proper thing to do now is to get the price right at the outset." *See also* Testimony of Ohio Commissioner Paul Centolella, Sept. 13, 2010 Tr. at 197; "[FERC is] putting the State in the position where if we were to try to get back to an efficient level of incentives, we would be having to in effect issue a charge for energy that was not consumed. We would be doing what would be perceived as a take-back by that customer. And that would put us in a very difficult position."

[28] Rule at P 28. Significantly, the New York Commission "acknowledges the overstated price signal inherent in an LMP-based formula for DR compensation * * *." "Although we understand that *an LMP demand response compensation formula may result in uneconomic demand response decisions in the markets (i.e., a price signal that exceeds marginal cost),* it also creates an incentive to participate in DR programs * * *." New York Commission May 13, 2010 Comments at 5–6 (emphasis added).

[29] Illinois Commission May 13, 2010 Comments at 13, "[I]f tariffs are well designed, controversy over the jurisdictional issue can be avoided. Requiring an ex ante approval of the retail rate to be subtracted from the LMP at the time demand response resources are utilized * * * accomplishes this design." *See also* Indiana Commission September 16, 2009 Comments at 3 (Docket No. EL09–68), "LMP–G is an accepted indicator of cost-effectiveness. Therefore, to provide incentive compensation at a level that is above the LMP raises the specter of unjust and unreasonable rates."

[30] Rule at P 63.

[31] *See* Sections 3.3A.4 and 3.3A.5 (Market Settlements in the Real-Time and Day-Ahead Energy Markets) of the Appendix to Attachment K of the PJM Tariff.

[32] Rule at P 46.

[33] Federal Trade Commission May 13, 2010 Comments at 6, "If customers have to pay the retail price for power they use but pay nothing for power they resell, then they will have incentives to resell power in situations in which it would be more beneficial for society for them to consume it." *See also* EPSA May 13, 2010 Comments at 23; APPA at 13; FTC at 9; Midwest TDUs at 14; Mirant at 2; New York Commission at 5; PJM at 6; PSEG at 5; and Potomac Economics at 6–8.

[34] PJM's Independent Market Monitor (a/k/a Monitoring Analytics, LLC) Oct. 16, 2009 Comments at 7–8 (Docket No. EL09–68), "Demand side resources are not generation. In a well functioning market, demand-side resources avoid paying the market price of energy when they choose not to consume. This allows customers to make efficient decisions about using power. It also follows that a customer receiving more than the market price as an incentive to curtail will make inefficient decisions about using power, and that this inefficiency imposes a cost rather than providing a benefit to society."

[35] NYISO May 13, 2010 Comments at 15, "[P]aying demand response an LMP-based payment because it is thought that demand response participation will reduce LMPs for all customers is not a sufficient rationale for justifying an 'additional payment' for a favored technology. Demand response is not the only resource able to provide such benefits. However, [other] technologies may be kept out of the market by demand response that would be uneconomic at LMP–G but participates when subsidized at LMP."

[36] Rule at P 59.

when prices are low.[37] If the playing field is level, resources can compete to the best of their abilities and efficient, cost-effective market outcomes will result.

As noted earlier, I would have preferred that we allow the regional markets to continue to develop their own compensation proposals. However, I also recognize that returning to a pre-NOPR era would be difficult now that the Commission has signaled a new policy of standardized compensation. Accordingly, if I were to now support any standardization of demand response compensation, it would be the LMP–G approach, which in my opinion, is the only economically efficient outcome for the markets.

Ultimately, the Rule, by requiring demand resources to artificially suppress the market price in order to receive incomparable compensation, will negatively impact the long-term competitiveness of the organized wholesale energy markets.[38] As such, lacking sufficient rationale, I cannot support this Rule as it violates the Commission's statutory mandate to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates.

Philip D. Moeller
Commissioner

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[37] PJM Interconnection's experience with paying LMP–G for demand response in its energy market provides an example of how market fundamentals properly influence demand resource participation. PJM's Independent Market Monitor recently reported that "[p]articipation levels through calendar year 2009 and through the first three months of 2010 were generally lower compared to prior years due to a number of factors, including lower price levels, lower load levels, and improved measurement and verification, but *have showed strong growth through the summer period as price levels and load levels have increased. Citing* Monitoring Analytics, LLC, *2010 State of the Market Report for PJM* at 30 (March 10, 2011) (emphasis added).

[38] Federal Power Act § 205(a), 16 U.S.C. § 824d (2006), "[A]ll rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful."

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Thursday, March 24, 2011

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FEDERAL REGISTER PAGES AND DATE, MARCH

11075–11314 1
11315–11666 2
11667–11936 3
11937–12268 4
12269–12548 7
12549–12816 8
12817–13058 9
13059–13284 10
13285–13500 11
13501–13878 14
13879–14268 15
14269–14574 16
14575–14776 17
14777–15208 18
15209–15790 21
15791–16230 22
16231–16524 23
16525–16682 24

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revison date of each title.

2 CFR

Proposed Rules:
Ch. XXIV 11395
Ch. XXVII 11163

3 CFR

Proclamations:
8628 11927
8629 11929
8630 11931
8631 11933
8632 11935
8633 12265
8634 12817
8635 12819
8636 12821
8637 15209
8638 16523

Executive Orders:
13566 11315
13567 13277
13568 13497

Administrative Orders:
Memorandums:
Memorandum of March 4, 2011 12823
Memorandum of March 8, 2011 13499
Memorandum of March 11, 2011 14273
Notice of March 2, 2011 12267
Notice of March 8, 2011 13283

Presidential Determinations:
No. 2011–7 of March 7, 2011 14269
No. 2011–8 of March 7, 2011 14271

4 CFR

81 12549

5 CFR

5901 14777

Proposed Rules:
315 13100
831 11684
842 11684
Ch. VII 15859
Ch. XXVIII 11163
Ch. XLII 15224
Ch. LXV 11395

6 CFR

37 12269

Proposed Rules:
Ch. I 13526
5 12609

7 CFR

1 11667
35 14275
205 13501
932 11937
1150 14777
1218 11939
1245 14278
1738 13770

Proposed Rules:
28 16321
59 12887
210 15225
220 15225
319 .....13890, 13892, 14320, 15225
929 16322
930 13528
946 16323
985 11971
1206 13530
1218 16324
1463 15859

8 CFR

212 16231
1274a 16525

Proposed Rules:
Ch. I 13526
214 11686
299 11686
Ch. V 11163

9 CFR

56 15791
94 15211
145 15791
146 15791
147 15791

10 CFR

72 12825
429 12422
430 .....12422, 12825
431 12422
712 12271

Proposed Rules:
50 12295
52 16549
170 14748
171 14748
430 13101
431 11396
600 13300
603 13300
609 13300
611 13300

11 CFR

110 16233

12 CFR

226 11319
326 14793

334 14793
702 16234
707 16235
708a 13504
708b 13504
932 11668
1225 11668
Proposed Rules:
202 13896
222 13902
226 11598
380 16324
567 12611
700 16345
701 16345
702 16345
703 11164
704 11164
709 11164
741 ....16345, 16570
742 11164
Ch. XVII 11395

13 CFR

124 12273
Proposed Rules:
Ch. I 13532
121 14323
Ch. III 12616

14 CFR

21 12250
25 ....12250, 14794, 14795, 15798
27 12274
39 ....11324, 11940, 12277, 12556, 12845, 13059, 13061, 13063, 13065, 13067, 13069, 13072, 13074, 13075, 13078, 13080, 14796, 14797, 15800, 15802, 15805, 15808, 15814, 15818, 15820, 15823, 16526
71 ....12278, 13082, 13083, 13084, 13086, 13505, 14799, 14800, 14801, 14802, 15825, 16530
73 12558
91 ....16236, 16239
95 11675
97 ....11942, 11944
119 16239
121 ....12550, 12559
129 ....12550, 15212
Proposed Rules:
Ch. I 11699, 16349
21 14592
25 ....14341, 14819
33 11172
39 ....11174, 12617, 12619, 12624, 12627, 12629, 12634, 13534, 13536, 13539, 13541, 13543, 13546, 13921, 13924, 13926, 14346, 14349, 15229, 15864, 15867, 15870, 15872, 16579, 16582
71 ....11978, 12298, 12643, 12645, 14820, 14822, 14823, 14824, 15231, 16348
73 11399
119 14592
121 ....11176, 14592
125 14592
135 14592
139 12300
141 14592
142 14592
145 14592
Ch. II 11699
Ch. III 11699

15 CFR

750 12279
902 15826
Proposed Rules:
400 12887
Ch. IX 13549

16 CFR

Proposed Rules:
301 13550
640 13902
698 13902

17 CFR

230 15841
240 11327
Proposed Rules:
Ch. I 14826
1 14825
3 12888
4 11701
16 14825
23 13101
37 13101
38 ....13101, 14825
39 ....13101, 16587, 16588
239 12896
240 ....14472, 15874
242 12645
270 12896
274 12896

18 CFR

35 16658
40 ....16240, 16250, 16263, 16277
410 16285
Proposed Rules:
35 11177

19 CFR

12 ....13879, 14575, 16531
102 ....14575, 16531
141 ....14575, 15841, 16531
144 ....14575, 16531
146 ....14575, 16531
163 ....14575, 16531
Proposed Rules:
Ch. I 13526
351 15233

20 CFR

404 16531
Proposed Rules:
404 ....11402, 13111, 13506
405 13111
408 11402
416 ....11402, 13111, 13506
422 11402
Ch. IV 15224
Ch. V 15224
655 15130
Ch. VI 15224
Ch. VII 15224
Ch. IX 15224

21 CFR

1 12563
14 12563
17 12563
113 11892
172 16285
173 11328
179 15841
201 12847
312 13880
314 13880
510 ....11330, 16532
516 11331
520 ....11330, 12563
529 ....16532, 16533
556 16290
558 ....11330, 16533, 16534
866 16292
1308 11075
Proposed Rules:
310 12916
866 16350
Ch. II 11163

22 CFR

Proposed Rules:
Ch. I 13931
120 16588
122 16588
123 ....13928, 16353, 16588
126 13928
129 16588

23 CFR

460 12847
Proposed Rules:
Ch. I 11699
Ch. II 11699
Ch. III 11699

24 CFR

Ch. XV 11946
Proposed Rules:
Ch. I 11395
Ch. II 11395
Ch. III 11395
Ch. IV 11395
Ch. V 11395
Ch. VI 11395
Ch. VIII 11395
Ch. IX 11395
Ch. X 11395
Ch. XII 11395

26 CFR

1 11956
301 13880
Proposed Rules:
1 15887
301 ....13932, 14827

27 CFR

Proposed Rules:
Ch. II 11163

28 CFR

0 15212
35 13285
36 13286
541 11078
Proposed Rules:
Ch. I 11163
16 15236
26 11705
Ch. III 11163
Ch. V 11163
Ch. VI 11163
Ch. XI 13931

29 CFR

4022 13883
4044 13883
Proposed Rules:
Ch. II 15224
Ch. IV 15224
Ch. V 15224
503 15130
Ch. XVII 15224
Ch. XXV 15224
4022 13304

30 CFR

250 11079
917 12849
918 12852
926 12857
Proposed Rules:
Ch. I 15224
70 12648
71 12648
72 12648
75 ....11187, 12648
90 12648
920 13112
938 12920

31 CFR

356 11079
Proposed Rules:
33 13526
223 14592
Ch. IX 11163

32 CFR

706 12859

33 CFR

3 13508
100 ....13884, 15214
117 ....11332, 11679, 11959, 11960, 13288, 13289, 14279, 14803, 14804, 16294, 16296, 16297
165 ....11334, 11337, 11961, 14279, 15216
401 13088
Proposed Rules:
Ch. I 13553
100 15244
110 15246
117 13312
165 14829

36 CFR

242 12564
1281 11337
Proposed Rules:
7 15888

37 CFR

380 13026
Proposed Rules:
Ch. 1 15891

38 CFR

17 11338
51 11339
76 14282
Proposed Rules:
3 14600
17 16354
51 16354
59 11187

39 CFR

111 ....14284, 16534

121 16534
965 15218
Proposed Rules:
111 ....13704, 16588
121 16588
172 13313
177 13313
952 13937

40 CFR

52 ....11080, 11082, 11083, 11963, 12280, 12587, 12860, 13511, 14584, 14805, 15852
60 ....15372, 15704
63 ....12863, 13514, 14807, 15554, 15608
80 15855
81 ....12587, 13289, 14812, 15219
98 14812
174 14289
180 ....11340, 11344, 11965, 12873, 12877, 16297, 16301, 16308
241 15456
261 16534
271 12283
272 12283
300 ....11350, 13089
Proposed Rules:
Ch. I 11980, 14840
51 15249
52 ....11190, 11983, 12302, 12305, 12306, 12651, 13567, 13569, 13944, 13962, 14602, 14606, 14611, 14616, 14626, 14631, 14831, 14835, 15249, 15892, 15895, 16168, 16358, 16365, 16593
55 15898
60 15266
63 ....12923, 13852, 14636, 14839, 15266
70 ....12926, 15249
71 15249
132 14351
141 11713
142 11713
152 14358
158 14358
174 14358
271 12307
272 12307
281 11404
300 13113
Ch. II 14840
Ch. III 14840
Ch. IV 11163, 14840
Ch. V 14840
Ch. VI 14840
Ch. VII 14840

41 CFR

105–735 15856
Proposed Rules:
Ch. 50 15224
Ch. 60 15224
Ch. 61 15224
Ch. 101 15859
Ch. 102 15859
Ch. 105 15859
Ch. 128 11163
Subtitle F 15859

42 CFR

413 13515
488 15106
Proposed Rules:
5 12307
71 13120
81 15268
410 13292
416 13292
419 13292
1007 14637

44 CFR

64 ....12596, 14293
Proposed Rules:
Ch. I 13526
67 ....12308, 12665, 13569, 13570, 13571, 13572, 14359, 14360, 15900

45 CFR

1180 13097
Proposed Rules:
155 13553
Ch. V 11163
1305 14841

46 CFR

Ch. I 13526
16 14818
Ch. III 13526
520 11351
530 11680
531 11680
532 11351
Proposed Rules:
Ch. II 11699

47 CFR

1 ....13295, 13296
11 12600
25 14297
63 ....13295, 13296
73 ....11680, 12292, 13524, 15857
74 11680
90 11681
Proposed Rules:
Ch. I 14871
1 ....12308, 13800, 16367
6 13800
7 13800
8 13800
20 12308
36 ....11632, 13576
43 12308
51 11407
53 11407
54 ....11632, 16482
61 11632
63 11407
64 ....11407, 11632, 16367
69 11632
73 ....11737, 13579, 13966, 14362, 14855, 14856
79 14856
97 16375

48 CFR

Ch. 1 14542
1 14543
2 14543
5 14548
6 14559
7 14543
8 14548
10 14562
13 14566
15 ....14559, 14568
16 ....14543, 14548, 14562
18 14548
19 ....14559, 14566
22 14570
25 14570
30 14570
31 14571
32 14543
38 14548
42 14543
44 14562
50 14543
52 ....14562, 14570
Ch. 2 11969
207 11361
209 11363
212 11371
215 13297
217 14587
225 ....14588, 14589
227 11363
232 11371
241 14587
246 14590
252 ....11363, 11371, 14589, 14590
Ch. 34 12796
Proposed Rules:
203 13327
209 14641
211 ....11190, 11985, 12666
212 ....11190, 11985, 12666
216 11410
217 11411
231 11414
252 ....11190, 11985, 12666, 13327, 14641
Ch. 5 15859
532 13329
908 11985
945 11985
970 11985
Ch. 12 11699
1401 15901
1402 15901
1415 15901
1417 15901
1419 15901
1436 15901
1452 15901
Ch. 24 11395
Ch. 28 11163
Ch. 29 15224
Ch. 61 15859

49 CFR

1 15221
109 11570
1155 16538
Proposed Rules:
Ch. I 11699
171 11191
173 ....11191, 14643
178 11191
180 11191
288 16200
Ch. II 11699
234 11992
Ch. III 11699
385 13121
390 ....13121, 14366
391 14366
395 13121
Ch. V 11699
571 ....11415, 11417, 11418, 15903
585 11418
Ch. VI 11699
665 13580
Ch. VII 11699
Ch. VIII 11699
Ch. X 11699
Ch. XI 11699
Ch. XII 13526

50 CFR

16 15857
17 11086
100 12564
217 16311
223 12292
224 14299
300 14300
622 ....12604, 12605, 12882, 12883, 16547
648 ....11373, 13887
660 ....11381, 11969
665 ....13297, 15222
679 ....11111, 11139, 11161, 11393, 11394, 12293, 12606, 12607, 12883, 12884, 13097, 13098, 14319, 15826
Proposed Rules:
17 ....12667, 12683, 13121, 14126, 14210, 15919, 15932, 16046
18 13454
Ch. II 13549
223 ....12308, 14882, 14883
224 ....12308, 15932, 16595
Ch. III 13549
Ch. IV 13549
Ch. VI 13549
622 ....13122, 15275
635 ....13583, 14884, 15276
648 ....11737, 11858, 14644, 16595
660 13592
665 ....13330, 14367
679 13331
680 13593

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.J. Res. 48/P.L. 112–6
Additional Continuing Appropriations Amendments, 2011 (Mar. 18, 2011; 125 Stat. 23)
Last List March 7, 2011

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